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OSHA'S FAILURE TO ESTABLISH A FARMWORKER FIELD SANITATION STANDARD

HEARING

BEFORE A

SUBCOMMITTEE OF THE

COMMITTEE ON GOVERNMENT OPERATIONS HOUSE OF REPRESENTATIVES

NINETY-NINTH CONGRESS

FIRST SESSION

NOVEMBER 6, 1985

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OSHA'S FAILURE TO ESTABLISH A FARMWORKER FIELD SANITATION STANDARD

WEDNESDAY, NOVEMBER 6, 1985

HOUSE OF REPRESENTATIVES,
EMPLOYMENT AND HOUSING SUBCOMMITTEE
OF THE COMMITTEE ON GOVERNMENT OPERATIONS,
Washington, DC.

The subcommittee met, pursuant to notice, at 9:40 a.m., in room 2247, Rayburn House Office Building, Hon. Barney Frank (chairman of the subcommittee) presiding.

Present: Representatives Barney Frank, Major R. Owens, Matthew G. Martinez, Howard C. Nielson, Jim Lightfoot, and Beau Boulter.

Also present: Stuart E. Weisberg, staff director and counsel; Joy Simonson, professional staff member; June Saxton, clerk; and Ken Salaets, minority professional staff, Committee on Government Operations.

OPENING STATEMENT OF CHAIRMAN FRANK

Mr. FRANK. The hearing of the Subcommittee on Employment and Housing of the Government Operations Committee will come to order.

We are meeting today to discuss the question, pursuant to our oversight function, of the Department of Labor's treatment of the problems involved with sanitary facilities for agricultural workers.

This is a subject within the jurisdiction of the subcommittee which has oversight jurisdiction over the Department of Labor. The statutory responsibility in this field is within the Department of Labor's ambit, and the Department of Labor has, in fact, promulgated a policy in this area.

The purpose of this hearing is to inquire into the effectiveness of the policy promulgated to accomplish the goals and to see how the Department of Labor intends to deal with this problem.

Are there any statements?

Does the gentleman from Iowa have a statement?

Mr. LIGHTFOOT. Mr. Chairman, I would like to thank you for holding this hearing today to examine whether the Federal Government or the State governments should establish field sanitation standards for our Nation's farmworkers.

I look forward to hearing from the witnesses and having an opportunity to question them.

After reviewing some of the testimony which will be presented, I can tell that there are definite views on this issue. However, I

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notice that no one disagrees that some sort of field sanitation standard should be developed. I think everyone agrees that every effort should be made to protect the safety and well-being of our Nation's work force, whether they work on a farm or in a plant.

The main question, however, is who should ensure that farmworkers are given adequate sanitary facilities—the Federal Government or the State government. I, personally, believe that the State government should be primarily responsible for this issue and should develop the standards based upon the farm size, the climate, the terrain, and the number of workers that exist in the State.

For example, in my home State of Iowa, we would need a very different standard than, say, my colleagues' States of Massachusetts and California. A national standard would not take into account the differences between our various States.

In Iowa, we don't have large farms that employ a lot of people. Very few farms employ more than 11 workers, which is the number that triggers Federal coverage. However, in some cases farmers in my State might employ 11 or more people. It would not be unusual for our farmers to hire this many teenagers to walk beans, for example. This would be a temporary job, maybe 2 weeks at the best, and if there was a national standard they might have to establish roadside facilities, although they would be only used for 2 weeks out of the entire year.

I know that my farmers would be adamantly opposed to this, and would probably not end up hiring the young people. They would find another method.

For those people who would argue that these facilities should be provided out of human dignity, I would agree with them. But, I would disagree on who should mandate these facilities, or where they should be located. I don't know of too many farmers who would not allow their workers—at least in my State—to use facilities in their home. I know no one would refuse to provide them with water out in the field.

Allowing the States to develop standards that meet the needs of the farm population of that particular State, I think, makes much more sense. I agree with Labor Secretary Brock on this issue, and I believe the Federal Government should work closely with the States which don't have standards to ensure that adequate standards are developed.

States should be given the first chance in developing a standard. If they fail, then maybe the Federal Government should step in. I think more States would follow behind these 13 States once they know that if they don't act, the Federal Government will.

Thank you, Mr. Chairman.

Mr. FRANK. We want to welcome to the subcommittee our newest member, the gentleman from Texas, Mr. Boulter.

Do you have a statement?

Mr. BOULTER. Thank you, Mr. Chairman. This is my first committee hearing, and it is a pleasure. I look forward to serving with you, Mr. Chairman.

I am not sure why we are doing this in view of the Secretary's statement that he would give the States 18 months in which to

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come up with standards and rules of protection. And, upon their failure to do so would promulgate a standard for field sanitation.

So, I am unclear why we are doing this. In my view the primary responsibility should remain with the States. Some 13 States have responded to the need already. The other States have been given 18 months to come up with standards. The Secretary has indicated that if they don't, he will.

It just seems to me that once again I see here the notion that the Federal Government always knows what is best and has the program that is ready to solve every problem of the day. And I just think that is the kind of thinking, Mr. Chairman, that has gotten us into the record budget deficits that we are experiencing today. And I think what we are doing here is superfluous at the very least.

Nevertheless, I do look forward to the testimony of the witnesses and intend to follow it very closely.

Mr. FRANK. Let me, in my statement, try to explain to our newest member of the subcommittee what we are doing here.

This is what is called an oversight subcommittee, and it looks into, by the charge of the Rules of the House of Representatives, the performance of departments. The notion that because a department has taken a position on an issue that in itself obviates a need for an oversight hearing, I think shows a complete misunderstanding of the oversight function.

The oversight function is precisely to look at actions that have been taken by executive branch agencies and to see if they are or are not adequate.

I am a little surprised at the gentleman's critique of the Labor Department. He said he thinks this is a case where people think the Federal Government knows best and are imposing things on the State. That would appear to be a description of what the Labor Department has done.

It is the Labor Department which has said that if the States don't act in 18 months it will, within 6 months, impose something on them. So, there does not seem to be a disposition on the Labor Department to leave the States uncoerced in this field. It is the U.S. Department of Labor under this administration that has announced that there ought to be a national policy here, and has said to the States, if you don't act, we will. That is the framework within which we are dealing here.

The Department of Labor is the one that has said we need a standard here. I know a lot of my colleagues in the debate in the House didn't think we needed a standard. But, Secretary Brock says we need a standard—does the gentleman want me to yield? I would be happy to yield.

Mr. BOULTER. Thank you, Mr. Chairman.

I was just referring to the chairman's well-known eagerness to legislate in this area, referring to the chairman's bill and remarks on the floor of the House.

Mr. FRANK. If the gentleman wants to debate my bill, I would be glad to do that with him in an appropriate forum. But that is not what the gentleman said. What the gentleman said was, he didn't know why we were having this hearing. And I would urge him to try to make some separation.

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It is not helpful to conglomerate everything into one's mind at once. They were separate issues. There is a time for legislation. I debated a bill on the floor of the House. But, the gentleman also said things that seemed to me aimed at the Labor Department, and I want to defend Secretary Brock against the gentleman from Texas, because the gentleman said we shouldn't have the Federal Government imposing its views here. Well, Secretary Brock has done that.

Secretary Brock has said to the States there will be standards, and if you don't do them, I'll do them.

So, in other words, we have this agreement. We are not here debating so much the policy. We are debating the efficacy of his way of going about it. Secretary Brock says he thinks there should be standards. He disagrees with many of my colleagues on both sides of the aisle—although more on your side than on mine—who said that we don't need any at all. Secretary Brock says we do.

Now, the question is, and the gentleman has raised the point, why don't we just leave it to the States. And the gentleman from Iowa said the States will do this. Well, maybe they will in the year 2406. We have here an issue that began in 1973 when the lawsuit was first brought. We have a long history here. I'm not aware of any constraints that have kept States from acting previously.

I am somewhat puzzled. The Secretary of Labor says this is wrong, there are health hazards here—I don't know if he banged his fist—I don't want to impute to him gestures he may not have made. He said this is wrong, there are health hazards here and we must act. And people must have a place to go to the bathroom. And, if the States haven't acted in 18 months, 6 months after that I'm going to act.

Well, I think the question about what people do in the 2-year interim is a relevant one. So, that is why I am here. And I am a little surprised——

Mr. BOULTER. Mr. Chairman, thank you for answering my question.

Mr. FRANK. I'm a little surprised at the suggestion that it is inappropriate for an oversight subcommittee to deal with a major policy statement of a department over which it has oversight. It speaks, in my mind, of a kind of sensitivity on the part of my colleagues who feel maybe this is one where the administration doesn't want any conversation.

I am particularly puzzled by the fact that in the area known as right to know—and I guess we will have to have a hearing on that, because my colleagues, some of them, think there is a mistake when the Labor Department preempts State action.

Now, the States had begun to act in a much newer area, the question of right to know about the use of chemicals in the workplace. And, as the States began to act, the same U.S. Department of Labor preempted all those State standards, and I guess my colleagues think that was wrong.

Of course in that case, it seemed to some of us that they were afraid the States were going to be too vigorous, and that is why they preempted. But, I guess we will have to look into that.

I would be interested in why it is right for the Labor Department to keep the States from passing right to know rules when workers

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want them, but it is not right to deal with them in the other situation. It seems to me the principle here is not federalism, but what do the workers want, versus what do the employers want.

And in the operating principle of the Labor Department, some people would have to do whatever the employers want. If you do that by being Federal, you do it at the Federal level. If you do that by being State, you do it at the State level.

If, somehow, the employers would manage to get a majority in the United Nations, I suspect we might have some lobbying to have it done there, although that is an unlikely prospect for a variety of reasons.

So, that is why we are having a hearing.

I would just like at this point to read into the record, before calling on my two colleagues and the ranking minority member, letters from the U.S. Catholic Conference:

Mr. Chairman, I am writing to you on behalf of the United States Catholic Conference to express our support for the establishment of an effective federal standard that would ensure adequate sanitary facilities for farmworkers. It is our hope that your hearing will help to expedite a more rapid resolution of this issue.

The Nation's approximately five million farm laborers, most of whom are poor, Hispanic and black, perform very difficult work. They are among the poorest and have few resources to secure just working conditions for themselves. It is both unjust and intolerable to exclude farmworkers from the protection of the Occupational Safety and Health Act workplace sanitation standards, while virtually all other American workers are protected. It is particularly demeaning when the services in question are such basic human necessities as drinking water and toilet facilities.

As you know, the attempt to promulgate a standard has been carried on since 1972. As late as 1982, the Secretary of Labor agreed to develop a standard in good faith. OSHA staff have developed a reasonable standard, whose application would extend to a little more than half a million workers. The Secretary's decision not to issue a standard at this time means that more than half of all farmworkers are still without adequate protection. This decision not only makes for further delays, but it is also not likely to create sufficient pressure in states to adopt the appropriate standards.

This is a matter of fundamental human dignity. The denial of such basic needs as drinking water and sanitation facilities violates the dignity of one of the most deprived groups of workers in our society.

Signed, the Most Reverend Daniel F. Hoye, U.S. Catholic Conference. That is the position of the U.S. Catholic Conference.

And, the General Board of Church and Society the United Methodist Church has a quite similar letter on the question and on the need.

It says:

For over sixty years, the United Methodist Church has been involved in ministry to the migrant workers. They have the right to organize and bargain. And also for the field sanitation standards.

I ask unanimous consent that these be put into the record.

Hearing no objection, we will place them in the record.

[The documents referred to follow:]

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General Board of Church and Society
The United Methodist Church

Statement in Support of

H.R. 3295

November 1, 1985

Dr. George E. Ogle
Department of Social & Economic Justice
General Board of Church and Society
The United Methodist Church

For over sixty years the United Methodist Church has been involved in ministry to the migrant workers of the United States and has consistently held that these people who care for and harvest our food deserve the same protection and benefits as other workers. From a perspective of human rights and racial equality, they have the right to receive adequate pay and safe, healthy working conditions; from a perspective of justice, they have the right to organize and bargain with the employer.

A few months ago staff of the General Board of Church and Society, an agency of the United Methodist Church, gave testimony before an OSHA Hearing urging that body to formulate a nationwide, minimum code that would require adequate drinking water and toilet facilities for field workers. Contrary to the evidence and to common decency Mr. Rowland of the Labor Department refused to promulgate the needed field sanitation code.

On June 25, 1985 staff of the General Board of Church and Society, along with delegations from the Catholic Church, the Presbyterian Church, the Episcopal Church, the Disciples of Christ and the Lutheran Council in the USA, visited Secretary of Labor Brock urging him to reverse the Rowland decision and announce a sanitation code that would be both feasible and provide the necessary protection. Mr. Brock decided to postpone a decision while exhorting the states to do better.

For more than a decade now the Labor Department has been refusing to develop a code. We find this attitude quite unacceptable. No one in the Labor Department would work at a place where the nearest toilet was a quarter mile away and where there was no drinking water available. Yet, for 13 years the Department has refused that minimal standard for brothers and sisters who serve us all by harvesting our food.

This is a matter that should not be delayed further. H.R. 3295 is a forthright piece of legislation that will place no big burden on anyone, but will rectify an injustice that has been perpetrated against the poorest of our land for too long. We strongly support the passage of H.R. 3295.

GEO/blr

The United Methodist Building ■ 100 Maryland Avenue, N.E. ■ Washington, D.C. 20002-5684 ■ (202) 488-5600

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UNITED STATES CATHOLIC CONFERENCE
Department of Social Development and World Peace
1312 MASSACHUSETTS AVENUE N.W., WASHINGTON, D.C. 20005 (202) 659-6790

Office of Domestic Social Development

November 5, 1985

Honorable Barney Frank, Chairman
Subcommittee on Employment and Housing
House Government Operations Committee
2153 Rayburn House Office Building
Washington, D.C. 20515

Dear Mr. Chairman:

I am writing to you on behalf of the United States Catholic Confererence, the public action arm of the U. S. Catholic Bishops, to express our support for the establishment of an effective federal standard that would ensure adequate sanitary facilities for toilets and drinking water at worksites for farmworkers. It is our hope that your hearing will help to expedite a more rapid resolution of this issue.

The nation's approximately five million farm laborers, most of whom are poor, Hispanic, and Black, perform very difficult agricultural work. Yet, these workers are among the poorest and have few resources to secure just working conditions for themselves. It is both unjust and intolerable to exclude farmworkers from the protection of the Occupational Safety and Health Act workplace sanitation standards, while virtually all other American workers are protected. It is particularly demeaning when the services in question are such basic human necessities as drinking water and toilet facilities.

As you know the attempt to promulgate a standard has been carried on since 1972. As late as 1982, the Secretary of Labor agreed to develop a field sanitation standard in good faith. OSHA staff have developed a reasonable standard, whose application would extend to a little more than half a million workers. The Secretary's decision not to issue a standard at this time means that more than half of all farmworkers are still without adequate protection. This decision not only makes for further delays, but it is also not likely to create sufficient pressure in states to adopt the appropriate standards.

Ultimately, this is a matter of fundamental human dignity. The denial of such basic needs as drinking water and sanitation facilities violates the dignity of one of the most deprived groups of workers in our society.

Thank you for consideration of our views.

Sincerely,

Daniel F. Hoye

Most Reverend Daniel F. Hoye
General Secretary, NCCB/USCC

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Mr. FRANK. The gentleman from Utah has joined us. I will ask for an opening statement.

Mr. NIELSON. Thank you.

I received a number of calls that delayed my appearance, because the president of the church to which I belong died last night. I had about seven different calls last night between 1:30 and every hour after that, and that is why I am late.

I recognize this subcommittee has the jurisdiction and the authority to conduct oversight hearings on the Department of Labor and its programs, specifically OSHA.

I still question, as Mr. Boulter did, apparently, whether this is the right and most effective forum for the consideration of whether we need a Federal field sanitation standard. I would have preferred leaving this issue to those who can more effectively address this question, such as the Energy and Commerce Subcommittee on Health and Environment on which I serve, or perhaps more appropriately, the Education and Labor Subcommittee on Health and Safety on which I served last term.

Nevertheless, I look forward to participating in this hearing and welcome our guests this morning.

Since I am a member of the same party as the President, I often find it necessary to defend the administration and its policies, knowing that they will receive more than their fair share of abuse from the other side. Now I don't always do this, as the gentlemen know. I will sometimes criticize the President if I feel he is wrong. I have done that on many occasions.

In this case, however, they have made it easy for me. I think Secretary Brock's decision regarding field sanitation is both proper and sensible, one I can back wholeheartedly. I applaud his support of federalism in the belief that some programs, many programs, can be more effectively administered by the States, such as field sanitation. The States are better equipped to draft and enforce standards that will provide comprehensive protection for farmworkers. And I commend to you the standards that California and Texas have implemented as being superior to anything the Federal Government can provide, because it would have to have a blanket standard to cover all the States.

I also support the Secretary's use of the "promise" of a Federal standard as leverage to motivate those States that may need a little prodding, and get them to act in a more responsible and effective manner.

Gentlemen, there is no question, farmworkers need protection. The President knows this. He fully supports Secretary Brock's commitment in this regard, despite the rhetoric we may hear to the contrary.

I would hope we can avoid the demagoguery that typically clouds the debate on issues such as this, and instead engage in a factual and constructive discussion on how we can better serve this community.

Mr. FRANK. I thank the gentleman. I wonder if he would yield for a second.

So we would all be guided by this, I certainly want to avoid demagoguery. I agree the gentleman has been very fair and very straightforward in calling them as he sees them.

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Mr. NIELSON. That was a very broad statement aimed at your entire party, and particularly those who choose to manipulate this issue strictly for partisan purposes.

Mr. FRANK. I just was wondering whether either the Catholic Conference or the Methodists would fall under the heading of demagoguery in the letter that I have read, so I will have a standard. Would you characterize either of those as demagoguery?

Mr. NIELSON. No.

Mr. FRANK. OK, we can stay within that standard then, and I won't feel so constrained.

We are very grateful here to have two of our colleagues here, including one of the foremost advocates and defenders of agriculture in the Congress, and the gentleman whose State has already been mentioned.

We will begin our testimony with the chairman of the Committee on Agriculture, the gentleman from Texas, Mr. de la Garza.

I appreciate, Mr. Chairman, in view of the great demands on your time, your willingness to join us this morning.

Please proceed.

STATEMENT OF HON. E (KIKA) DE LA GARZA, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

Mr. DE LA GARZA. Thank you very much, Mr. Chairman and members of the subcommittee.

I appreciate the opportunity to give the subcommittee my views on the need to expand sanitation protection for our farmworkers.

Let me say emphatically at the beginning that my goal in this matter is to see that the men and women who work on farms get the full degree of protection to which they are entitled.

Sanitation standards for field workers are important for the protection of their health. But to me, something more is involved. That is a question of human dignity for all farmworkers, migrant and seasonal, who are affected—or would be affected—by sanitation standards for agricultural employees.

I feel this deeply because a great many of these farmworkers live in my congressional district. These are my friends and neighbors. Certainly we have a legal obligation, as the Secretary of Labor has already indicated, to provide adequate sanitary standards for farmworkers all over the country. But beyond that, I believe we have a moral obligation to make progress in this area.

It does not seem to me that this is really a conflict between farmers and farmworkers. Certainly there should not be a conflict. The producer and the farm employee are both part of the system that feeds us, and many times you can find them working together in the fields. I hope sincerely that we can move to the day when all farmers get decent prices for their crops and have the resources to provide all necessary health and sanitation facilities. The fact is, however, that we still have a problem in providing full coverage of sanitation standards for all farmworkers around the Nation.

Some States, including those where a majority of field workers are employed, already have their own standards in place, but the job is not done. It will not be done until all farmworkers, all over

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the country, are covered by standards which provide adequate protection. The question now is, how do we get there from here?

I recognize that men and women who share the same goals in this important matter may differ on the best way to reach those goals. To me, the question is simply one of finding the simplest, clearest and quickest way to accomplish—in a reasonable way—something we all agree should be done.

In my State of Texas we have very strong field sanitation regulations but they are not working and they are basically not being enforced for many reasons. I would invite the chairman and the members of this subcommittee to visit Texas and see for yourselves that in spite of the strong regulation which appears in the books, basically, they are not being enforced in the field.

For that reason, Mr. Chairman, I believe we should not wait another 18 months or perhaps 2 years for action. I, by the way, support the action proposed in your bill, Mr. Chairman, H.R. 3295, to put a reasonable sanitation standard into effect by law at the earliest possible time.

I thank the subcommittee for this opportunity to testify, and will be happy to answer any questions you might have.

Mr. FRANK. Thank you, Mr. Chairman.

We will hear from Mr. Torricelli and then take some questions from both, if we could?

The gentleman from New Jersey, Mr. Torricelli, has been very active in his own home State in dealing with this issue. And comes to us with, I think, very distinguished credentials of someone that has taken the trouble to learn about these issues and concern himself about people. We usually don't get advocacy from politicians with such a great deal of knowledge on this subject.

STATEMENT OF HON. ROBERT G. TORRICELLI, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW JERSEY

Mr. TORRICELLI. Thank you, Mr. Chairman.

I want to commend you on having us and giving us the opportunity to address this issue.

I'm here to testify, Mr. Chairman, that this is not a problem for any one region of the country. It is not merely the question of migrant workers in the Southwest or the Far West. It's also the question of the 30,000 migrant workers who each year come to the State of New Jersey to pick apples in northern New Jersey or blueberries or cranberries in southern New Jersey.

These workers may not drive over any border. New Jersey borders no other country but each year plane loads by the thousand bring migrant workers from Puerto Rico.

I'm also here in the wake of the Secretary of Labor's announcement to tell you that my State, New Jersey, sadly has failed to provide any protection.

Fifteen years ago our legislature set a standard. We became a national leader. We passed legislation for field sanitation requirements that required drinkable water and toilet facilities within 5 minutes of migrant workers in New Jersey.

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Today, 15 years later, not a single regulation, as required under that State statute, has been issued and there is virtually no enforcement.

I believe, Mr. Chairman, that this offers strong evidence the Secretary of Labor's challenge to the States will not be met. More, however, is being lost, Mr. Chairman, than time.

A recent tour of 300 New Jersey farms, in this calendar year revealed one farm with toilets, no drinking water and no washing facilities. It is not an issue of convenience or, even if it were not enough, simple human decency. It is also an issue of health. Those who work and ours.

Mr. Chairman, the people who pick the food that America eats are often sick, sometimes diseased and increasingly contaminated with pesticides and chemicals. One health service agency in southern New Jersey, near the New Jersey farms, that tends to the health of migrant workers, recently reported that leading illnesses among migrant workers were gastritis, vomiting, and recurring diarrhea. The causes were clear; dirty drinking water, exposure to chemicals and no ability to rinse pesticides in the food they pick.

As these problems mount, new ones arise. This year my State became a national leader, again, by passing a strong and effective right-to-know law. But to the eternal shame of my State migrant workers were specifically and purposely excluded from any protection under the law.

New Jersey has a strong minimum wage law. But no minimum wage protection is given for overtime for migrant workers. A State commission has been examining the failure of migrant workers to receive unemployment compensation for 2 years. We are awaiting its first recommendation. Just as things got bad they have now gotten worse.

Last month a court in New Jersey, again setting a new national standard, ordered a union election for migrant workers. An election that had been ordered specifically because of these very health issues. A local Federal agricultural agent responded by organizing the farmers to a meeting to inform them of their rights.

My conclusion, Mr. Chairman, is that the Federal Government is not neutral in this fight. The State governments certainly have not been neutral in this fight. Those who would look to the States for an answer seek no answer at all. If my State, with a strong, progressive tradition, failed in its 15 years since the enactment of State law to issue a single regulation, I have little belief that others will follow.

I ask the members of the committee to be honest with themselves. If you seek no answer, if you believe that this plight in the health, welfare, and decency of these workers is necessary for some economic, social, or other reason, admit it. Face it, say it. But don't seek an answer that is no answer at all. In the experience of my State, to look to the State is exactly that: no answer.

Thank you, Mr. Chairman.

Mr. FRANK. Thank you very much, Mr. Torricelli.

Any questions, Mr. Nielson?

Mr. NIELSON. Yes, I would like to ask each of the gentlemen: Did you support the Miller amendment to the agriculture bill?

Mr. TORRICELLI. I did.

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Mr. DE LA GARZA. I did.

Mr. NIELSON. Even though your committee opposed, did you still support it?

Mr. DE LA GARZA. Our committee did not consider it.

Mr. NIELSON. You didn't take a position?

Mr. TORRICELLI. The Foreign Affairs Committee had no position.

Mr. DE LA GARZA. The Agriculture Committee did not consider it.

Mr. NIELSON. Why didn't the Agriculture Committee consider it?

Mr. DE LA GARZA. That's not within our jurisdiction.

Mr. NIELSON. Do you think it puts a lot of burden on the small farmer?

Mr. DE LA GARZA. It basically exempts the small farmer. It is designed for the large groups of workers that come periodically to the larger farms. Exclusion of 10 workers would exempt 75 percent of the small farmers in my congressional district.

Mr. NIELSON. How would that play in New Jersey—what percentage of the farms have less than 10 workers? Do you have any idea?

Mr. TORRICELLI. I think a significant percentage. I would ask you in considering that burden, however, to look for something further.

From the evidence I have seen, albeit there are no studies, the rate of people missing work and being sick and leaving their jobs because of these various illness and problems, I suspect, would add considerably more than the cost of a portable toilet or some clear water and a pail.

Mr. NIELSON. The reason I asked the question about the burden, was that throughout that farm debate—and I come from an agricultural State myself; I was raised on a farm so I know something about this problem—we talked about the poverty of the farmer, the fact that he is having a hard time financially. I just wonder if this would add another burden——

Mr. DE LA GARZA. Mr. Chairman, may I——

Mr. FRANK. Mr. Chairman, you may do anything you want here.

Mr. DE LA GARZA. I doubt that 5 percent of the farmers covered by the commodities in the farm bill would be covered by this regulation. It would not cover 10 farms in Iowa.

Mr. NIELSON. The large farmers are better able to handle this.

Mr. DE LA GARZA. No. The growers of the commodities covered in the farm bill—corn and wheat and soybeans—are not heavy users of manual labor that we are talking about. These users are basically fruit and vegetable growers. These commodities are not covered in the farm bill.

Mr. NIELSON. You mentioned that the standards in Texas are pretty good but they're not enforced. Why aren't they enforced?

Mr. DE LA GARZA. Well there are very strong regulations on the books. It's a haphazard situation. The State health commission is the enforcer of the health regulations and delegates to the counties. If a county does not have a health inspector, no one is there to supervise.

Mr. NIELSON. It's lack of personnel or lack of commitment on Texas' part?

Mr. DE LA GARZA. I would say both. I would say that there is a lack of commitment from State officials. I respectfully—and I probably would be challenged—would say it's both.

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Mr. NIELSON. Do you have any reason to think that Federal standards would be enforced any better than the State ones are?

Mr. DE LA GARZA. If you have the Federal standards then you have the supervisory situation. This legislation provides the mechanism beyond the county health inspector.

Mr. NIELSON. You think a Federal standard might be enforced better than the State?

Mr. DE LA GARZA. It always is.

Mr. NIELSON. It always is? Let me ask you this question. This committee has talked about OSHA in connection with the Superfund, and how OSHA didn't take the lead like it should have and it was waiting for EPA to give the signal before OSHA would act.

Do you think there is any jurisdictional problem between the States, the Department of Agriculture and OSHA? Do you think there might be some overlapping jurisdiction problem on this, and that the Frank legislation can straighten that out?

Mr. DE LA GARZA. You can't just straighten that out.

I mentioned two things, if you heard my statement. One, that every State should be involved, not only the States that voluntarily have programs. I don't know about the Superfund. But it is common knowledge and, I think, authenticated that Federal regulation is enforced, whereas State regulation may or may not be for whatever reason.

Mr. NIELSON. I think it would depend on the particular regulation that we are talking about and the particular State that we are talking about. I think it works both ways. I've seen it where in some cases the State does much better. I've seen in some cases where the Federal does much better.

Mr. DE LA GARZA. I have found the State with the exception of California to lag behind the Federal Government to tell you the truth. California has always been ahead of the Federal Government. But beyond that, no.

Mr. TORRICELLI. If you will permit me.

The experience of New Jersey, I would say, is maybe a little bit different and similar to some other States not mentioned. In our case it is not just the failure to enforce regulations but to have any issue. And I think the explanation is clear: migrant workers don't count. They are gone long before election day and, unlike a situation in organized labor where you have a union which has a constituency and is an important part of the political life of the State and then the company which is the same, here the balance is strongly tilted.

The migrant workers are of no political standing and so the local pressures, the powers that come to bear make it impossible to either issue or enforce any regulations. That is why in my view, for my State's purposes, Federal intervention is so critical.

Mr. NIELSON. Both of you implied that the 18-month waiting period would be a waste of time, that the States are not going to do anything, and that we ought to start now.

Do you still feel that way?

Mr. DE LA GARZA. It's not a waste of time. And it's commendable that the Secretary of Labor has taken this action. My personal commitment is that it's needed now.

Mr. NIELSON. You don't want to wait the 18 months?

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Mr. DE LA GARZA. You don't tell a lady that's working in field that she has 18 months to go to the bathroom behind a palm tree. It needs to be done now. And that is—the commitment of the Secretary of Labor I have no quarrel with. I admire and respect him for it. It's the 18 months that bothers me. It needs to be done now.

Mr. NIELSON. I thank the gentleman.

Mr. FRANK. I have a couple of brief questions.

First, with regard to the EPA, OSHA thing. Obviously, conflicts between two Federal agencies at the Federal level are quite different legally than the Federal-State question. I do think it would be wise to be explicit here that we do not intend to preempt. I intend to, on the legislative front, submit an amended version of my bill to make that clear.

There have been some court decisions on the preemption thing. No one doubts that if we act in conjunction—Congress and the Labor Department together—we could make it very clear that we do not intend to preempt any State standard which is more effective. We wouldn't intend to preempt the States' ability to act with farms of less than 11 if they wished to. Those things could easily be handled.

Mr. TORRICELLI. Mr. Chairman, is the perfect answer to the question properly raised by the members of the committee that the situation in States differ or what the Federal Government should do is set a minimum, a floor, and allow the States to adjust to their own local circumstance.

Mr. FRANK. There's no constitutional problem with that as long as we're explicit.

I would like to ask Mr. Torricelli because we have a great outbreak of State rightsism that's flared up here. You mentioned the right-to-know law that happened in New Jersey.

Would you tell us what the Federal Government did with regard to the New Jersey right-to-know law? In other words, the State of New Jersey acting under its obligation to protect its workers—and we have been told by our Republican colleagues that's the way it should be handled—the States should be able to do it and they should be able to take into account the special things.

And certainly when it comes to chemicals New Jersey is very special I grant [laughter], and I grew up there 21 years, got a lot of hostages still there, relatives. So I don't mean to be rude. [Laughter.]

New Jersey clearly has a different situation with regard to chemicals in the workplace. New Jersey is truly very different than North Dakota. The arguments for State-by-State differentiation would certainly point to the right-to-know law.

Would you tell us what the action was with regard to this Labor Department, New Jersey right-to-know law.

Mr. TORRICELLI. New Jersey passed a good and effective right-to-know law, though I want to repeat not on the question of migrant workers. It would have been impossible for us to pass any law at all if we had included migrant workers because of the consistency against them.

The Federal Government then followed itself with conflicting standards in its right-to-know law.

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Mr. FRANK. All right, New Jersey, yours is OK. You can have yours and we can have ours. My recollection was that they specifically preempted.

Mr. TORRICELLI. The argued preemption which has gone to the courts, the administration position, was that there was preemption and New Jersey law did not stand. It's now become a legal matter.

Mr. FRANK. The Labor Department, with regard to right to know, has a very similar situation. They explicitly preempted the States. I'm not aware they waited 18 months and 6 months after that, they just preempted—let me be very explicit.

That is an inconsistency that in my judgment reaches a point of hypocrisy. To say that when the States deal with the right to know that is preempted, but when they are dealing with farmworkers they are not.

And I think that means what really is at stake here is not respect for federalism but respect for the employers' wishes.

Right now, I would also like to say I share the gentleman from Texas' view of the Secretary of Labor. I think the Secretary of Labor wants to promulgate the standard right away, and was simply overruled by higher-ups in the administration. I do not impugn Mr. Secretary Brock. I know Secretary Brock declined the invitation to testify. He sent one of his aides. I understand his reluctance to defend the decision that I believe he was forced to make.

Any further questions?

Mr. Lightfoot?

Mr. LIGHTFOOT. Yes, Mr. Chairman.

I guess, by way of a little background, Mr. Chairman, the particular portion of Iowa that I represent used to be called the Seed and Nursery Capital of the World. The nurseries used a lot of migrant workers until it became more cost-effective to use methods other than hand labor.

As a youngster growing up in this area and seeing what happens when you have two companies—one that treats their employees in a decent manner and one that does not, wherein we had a lot of problems in town because of that.

That has changed at this point in time. I'm also familiar with your State. I lived there for a few years. In fact, I used to send my trucks down into the valley so we could get a back haul. That's the only thing that we could haul out of Texas with their permits. The point I would like your comment on and it's back to what you said earlier that you do have laws in Texas but they are not being enforced at this point in time.

What could the Department of Labor do without changing the law to get Texas to move? Isn't the threat of Federal oversight what is going to force them to enforce the laws that they have?

Of course, if we go in with the chairman's bill, that is one method. Could not the Department of Labor be a little bit more emphatic in what they are saying and accomplish the same end?

Mr. DE LA GARZA. One, it is not a law in Texas but rather a regulation promulgated by the State health department.

Second, the passing of Federal law per se is not going to change that in Texas, a lack of enforcement. But once you have set a minimum standard then the Federal Government has the obligation to

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see that at least that is a minimum. And this I think would be the moving force for those States that have even higher regulations than we are speaking of here but that are not being enforced. So, it may be a fallback to the good regulation that is on the books not being enforced. At least the minimum standards set by Federal regulation then would have to be met.

By the way, let me state that there is no stronger advocate of States rights than myself. It is not a question of a basic State right issue but rather the health and safety of the people of the United States, a particular group that happens to work on farms.

Mr. LIGHTFOOT. Then, under what the Secretary has talked about it's obvious that you are opposed to the 18-month time period.

Mr. DE LA GARZA. That's the only thing that I am opposed to in what the Secretary has done. We don't know what final regulations he might promulgate. But certainly he would promulgate a norm or minimum standard of some kind.

And, again, I admire and respect the Secretary and he has made that commitment. The only thing I disagree with is having to wait 18 months.

Mr. LIGHTFOOT. I see. OK. Thank you, Mr. Chairman.

Mr. FRANK. Mr. Martinez.

Mr. MARTINEZ. Thank you, Mr. Chairman.

You know, I guess, if we don't want to do something we can find all kinds of reasons why to put it off. But earlier this year, in January, in fact, there was a press conference held here by a group who had been fighting—in fact, they were the ones that instigated the suit in trying to get field sanitation promulgated. And at that press conference there was a representative of the Secretary of Labor there and he said to that group at that time that within 6 months there would be an announcement of the promulgation of field sanitation regulations. And, yet, not less than 6 months later it was announced by the Department of Labor that there would be none. So, you know, they talk out of both sides of their mouth.

At that press conference they said, that representative at least said, that there was a need for it. Now, it doesn't take very much common sense to realize that if in over 12 years if there has been no move toward and of the States—by any of the States toward developing these regulations that there is going to be none. And when we talk about the need for, and arguing whether we should or not, it's evident that when the States would not provide for the safety and health of people that the Federal Government has to step in and do it. That's why they developed National OSHA.

Now, it is the jurisdiction of OSHA to provide safe conditions for people in the workplace. And that's what this is. And I think it is under the jurisdiction. I don't think that there should be any question that we should do it and we should do it right.

But let me ask you, Mr. de la Garza, in your experience because you visited farms, I imagine both sizes small and large, the ones that would be exempt. Let me ask you a question: In the farms where there are small numbers of 10 or less how do these farmers provide for their workers? Do they provide sanitation for their farmers?

Mr. DE LA GARZA. No.

Mr. MARTINEZ. I mean for their workers?

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Mr. DE LA GARZA. It's a very awkward situation. The farmer growing commodities like those in the farm bill; corn, wheat and soybeans and so on regardless of the size of the farm would not be covered by this.

So, you are speaking only of the fruit and vegetable growers and there are but a very, very few that would hire 10 individuals or less. So, my experience and what I visualize that we speak of is the fairly mid-sized to large-sized farmer or combination thereof or corporation that has the seasonal workers. They bring in 50, 75, 100 or sometimes 200 workers. But when you speak of the little farmer in my area that owns 10, 20, or 30 acres, either he is in a pool where the packing shed sends a crew or where his family does the work themselves to take to the side of the road or to a little market or he hires a moving crew chief with workers. So, the very small and the very large would not be covered by these regulations.

Mr. MARTINEZ. And they do provide other means or it's not necessary for them to be covered by this?

Mr. DE LA GARZA. No, it's necessary. But they don't provide the means and I guess, what you're asking is should we have a limitation of 10 as to the number of people.

Mr. MARTINEZ. That's what I'm asking. Why do we exclude less than 10 if they still need the facilities?

Mr. DE LA GARZA. I guess, it's because of the economic factor.

Mr. FRANK. If the gentleman will yield. There is a general rider on the appropriations bill that prevents OSHA from dealing with employers with 10 or less. That's in the OSHA rider in the amendment that came on the floor. And it simply confirmed the congressional policy that OSHA should not deal with employers of 10 or less.

Mr. MARTINEZ. I particularly think that they all should be covered. But if that's the law that's the law.

Mr. FRANK. Thank you.

Gentleman from Texas, Mr. Boulter?

Mr. BOULTER. Mr. Chairman, in view of the time I will forgo any questions. I appreciate the balance of the statements of the chairman of the Agriculture Committee.

Mr. FRANK. Thank you.

Mr. OWENS. Nothing.

Mr. FRANK. We're going to take a recess. We will be gone about 20 minutes because we have a quorum and then a couple of 5-minute votes.

I apologize to the other witnesses. I want to thank our two colleagues. This is an unusually serious piece of congressional testimony. Not the usual hit and run. So, I really do appreciate it because these are two gentlemen who have had a great deal of expertise in this area. We will be in recess until we are completed with the voting.

Mr. DE LA GARZA. We will be excused at this time, Mr. Chairman?

Mr. FRANK. At this time you will be excused subject to recall at any time. Don't leave the jurisdiction, Kika. [Laughter.]

[Brief recess.]

Mr. FRANK. Committee will reconvene. We will now have our second panel. I apologize for that lengthy three votes; nobody op-

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posed any of them. I don't know why we had to rollcall them but we did.

Now, our next panel will be Mr. Charles Jeffress who is here on behalf of the North Carolina Commissioner of Labor. Jan Hartke who's here representing New Mexico Gov. Toney Anaya. And Mr. Fields, American Farm Bureau Federation.

Mr. Jeffress, why don't you go ahead.

STATEMENT OF CHARLES JEFFRESS, ON BEHALF OF THE NORTH CAROLINA COMMISSIONER OF LABOR

Mr. JEFFRESS. Thank you, Mr. Chairman.

I have a full statement here by Commissioner of Labor John Brooks. In the interest of brevity I will not read the full statement but will read excerpts therefrom.

Mr. FRANK. With no objection we'll put that statement into our record.

Mr. JEFFRESS. Thank you, Mr. Chairman.

The statement is on behalf of John C. Brooks, the commissioner of labor for the State of North Carolina.

As the elected commissioner of labor for the State of North Carolina, I serve also as the State designee for our State occupational safety and health program, which is recognized by the U.S. Secretary of Labor as a certified State OSHA plan according to section 18(b) of the Occupational Safety and Health Act of 1970.

During the course of our migrant labor inspections pursuant to our State OSHA regulations we've gained a great deal of experience with farm labor working conditions, particularly conditions where crops are picked primarily by hand-labor such as vegetables and, in our State, tobacco. I can say without reservation that farm field labor continues to be the hottest, dirtiest, most physically taxing of any occupation in America today.

The plight of agricultural workers virtually cries out for a field sanitation standard.

Secretary of Labor William Brock has heard the cries and has failed to heed them. A copy of Secretary Brock's letter of October 21, 1985, to Gov. Jim Martin of North Carolina is attached as exhibit 1 to this testimony. It is very revealing to read the first two sentences, which I quote:

> We recently made a determination that steps must be taken to provide additional protection for agricultural hand-laborers who are exposed to a variety of serious hazards associated with inadequate drinking water, handwashing, and toilet facilities in the fields. I am convinced that the evidence compiled over the last several years by the Labor Department's Occupational Safety and Health Administration (OSHA) clearly shows the existence of a serious health problem that, unfortunately, has not been fully addressed.

It is imperative that field sanitation requirements be addressed on a uniform national basis. All occupational safety and health standards have been predicated upon uniformity, or at least upon a minimum national level of protection which States may supplement if necessary.

It is ironic that on the two most publicized occupational health issues of the past 2 years, as the chairman noted, right to know and field sanitation, Federal OSHA would take diametrically opposite stands. On right-to-know legislation, Federal OSHA not only

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issued a uniform national standard for manufacturers, but argued in court that States were preempted from having their own standards different from Federal OSHA. Then on field sanitation, Secretary Brock claims that State regulation is superior to a uniform Federal standard. His claim is specious. He is not only passing the buck, he is abrogating the policy of his own agency on uniform standards and is ignoring the findings of his own staff on the need for field sanitation rules.

In a sector of our economy such as agriculture, the case for a uniform field sanitation standard administered and enforced by OSHA is overwhelming. There is widespread interstate commerce characterized by a multitude of migrant laborers who harvest crops in State after State. These migrants don't have access to the field sanitation rules in each respective State even where they do exist. And they might not be able to read or comprehend them were they available.

Field sanitation is an occupational issue. It is appropriate for OSHA regulation. A crazy quilt pattern of State regulations will frustrate the very people whom the regulations are designed to help.

Secretary Brock has also stated that OSHA limitations render OSHA a less satisfactory means than State regulations for purposes of enforcing field sanitation rules.

Our OSHA program has limited application in agriculture, in part because of jurisdictional limitations imposed by Congress and in part because of limitations in the scope of standards issued by Federal OSHA. The jurisdictional limitation is found in the rider to the appropriations act for the U.S. Department of Labor. That rider states in part:

> None of the funds appropriated under this paragraph shall be expended to enforce any regulation under the Occupational Safety and Health Act of 1970 which is applicable to any person who is engaged in a farming operation which does not maintain a temporary labor camp and employs 10 or fewer employees.

While this limitation is unfortunate, it allows us to maintain OSHA jurisdiction in the case of farmers who operate migrant labor camps. With more than 40,000 migrant workers visiting North Carolina each year, migrant workers harvest a substantial portion and perhaps a majority of our hand-picked crops. While we do not know the number of migrant camps in North Carolina, the State department of human resources has estimated that there are in excess of 3,000 migrant camps in our State.

Maintaining OSHA jurisdiction over these camps is essential. The rider allows us to compensate for a jurisdictional limitation imposed upon county health departments by a State legislature. For years health departments were prohibited from enforcing sanitation regulations in migrant camps with fewer than 10 workers. Two years ago the legislature exempted camps with fewer than 13 workers from coverage under the law.

OSHA standards are now the only standards which offer protection to migrant workers in North Carolina who live in camps with fewer than 13 people. Leaving regulation to the States may well result in fewer workers being covered than would be covered by OSHA action.

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In addition to the jurisdictional limitation imposed upon OSHA coverage of agricultural workers by Congress there is also a limitation in scope adopted by Federal OSHA. Federal OSHA acted in 1971 to exempt agricultural employers from almost all OSHA standards. Thus OSHA protection provided free to workers in all other occupational endeavors are denied to farmworkers. If this limitation in scope did not exist, we would not be here today describing the need for field sanitation standards for farmworkers. Sanitation standards which exist for all other occupations would already apply to agricultural work.

What will happen if the States follow the Secretary's requested procedure in individually establishing field sanitation standards and thereafter Federal OSHA determines that what the States have done, at great expense, is either inadequate or confusing, or both? According to the Secretary's statement, Federal OSHA will then establish minimum national standards. Under the recognized doctrine of preemption, what the States may then have done would be mooted or severely modified, necessitating further State legislative action to clarify the resulting confusion. There is no need for this regulatory disarray. A uniform national standard adopted now will avoid much confusion later.

Having commented upon the need for a uniform national standard let me share with you briefly the benefit of North Carolina's experience in enforcing a field sanitation standard under OSHA.

In 1981, we in North Carolina were tired of waiting for Federal OSHA to act. Frankly, it doesn't take much research to document that working 10 and 12 hours a day in the hot sun without water to drink can be hazardous to your health. It also does not take much research to document that after working in the dirt and occasionally with pesticide-treated plants, it is important to your health to be able to wash your hands before eating.

Therefore, with our limited staff, we proceeded to hold hearings in 1982 and 1983 on a field sanitation standard requiring those two components. I have here and submit for the record as exhibit 2 of this statement the transcripts of those hearings.

We adopted that standard during the 1983 growing season. Farmers have now had 2 years to become familiar with the regulations and to comply. Our 1985 State OSHA inspections have included an estimated 190 inspections where we were able to check for compliance with the field sanitation standard. Of those inspections, 14 percent have been found to be in violation even of the basic requirements of providing clean drinking water in single-service cups or accessible handwashing facilities with soap and towels.

At the time we initiated our limited research in 1981, there were no studies that showed that lack of toilet facilities present a health problem. If Federal OSHA, after evaluating those studies, issues a standard also requiring toilets in the fields, North Carolina will adopt an identical standard. Our research and analysis capability is limited, but we do routinely adopt whatever Federal standards are issued.

I cannot impress upon you enough the importance of this issue's being addressed on an national basis by OSHA. We in North Carolina have found a need for rules, but our acting alone has little effect upon migrants who work here a short while and move on.

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Only a uniform national standard will adequately serve the needs of farmworkers, and as the designee for one State OSHA program that has tried to do something on its own, as well as the commissioner of labor charged with promoting the welfare of our working people, I urge you to require the U.S. Department of Labor to act on a national basis.

[The prepared statement of Mr. Brooks follows:]

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Statement
by
John C. Brooks
Commissioner of Labor
State of North Carolina
submitted to
The Employment and Housing Subcommittee
of the
House Government Operations Committee

November 6, 1985

Thank you, Mr. Chairman, for the opportunity to present testimony to the Employment and Housing Subcommittee of the House Government Operations Committee on the need for the establishment of uniform minimum standards on field sanitation for the nation's agricultural workers. As the elected commissioner of labor for the State of North Carolina, I serve also as the state designee for our state occupational safety and health program, which is recognized by the U.S. Secretary of Labor as a certified state OSHA plan according to Section 18(b) of the Occupational Safety and Health Act of 1970.

As commissioner of labor, I made a determination in 1977 that working conditions for migrant agricultural workers were so poor as to justify a special emphasis by our state OSHA staff on inspecting migrant labor camps. That year we inspected 290 migrant camps. Our emphasis has continued each year since then, and this year we will inspect approximately 250 camps.

During the course of these inspections we have gained a great deal of experience with farm labor working conditions,

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particularly conditions where crops are picked primarily by hand labor, such as vegetables and tobacco. I can say without reservation that farm field labor continues to be one of the hottest, dirtiest, most physically taxing of any occupation in America today.

The apparent need of agricultural workers who confront almost daily the introduction of new and little-known toxic substances of herbicides, insecticides, and pesticides into their work environment virtually cries out for a field sanitation standard. Secretary of Labor William Brock has heard the cries and has failed to heed them. A copy of Secretary Brock's letter of October 21, 1985, to Governor Jim Martin of North Carolina is attached as Exhibit 1 to this testimony. It is very revealing to read the first two sentences which state:

> We recently made a determination that steps must be taken to provide additional protection for agricultural hand laborers who are exposed to a variety of serious hazards associated with inadequate drinking water, handwashing, and toilet facilities in the fields. I am convinced that the evidence compiled over the last several years by the Labor Department's Occupational Safety and Health Administration (OSHA) clearly shows the existence of a serious health problem that, unfortunately, has not been fully addressed.

After making this determination, why hasn't OSHA acted? It most certainly isn't because of "the encouraging strides already made in this area by several key States" as the Secretary explains in his letter. Many of these strides have been made, as in North Carolina, after the states determined in frustration that the needs cried out for attention which federal OSHA was not giving. After years of waiting for federal OSHA to act and

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finding that federal OSHA kept coming up with reasons why it could not act, these states acted in-so-far as they could with their own more limited resources. Only you in Congress can force the Labor Department to act on a national basis on basic health needs for agricultural workers.

It is imperative that field sanitation requirements be addressed on a uniform national basis. All occupational safety and health standards have been predicated upon uniformity, or at least upon a minimum national level of protection which states may supplement if necessary.

It is ironic that on the two most publicized occupational health issues of the past two years, "right to know" and field sanitation, federal OSHA would take diametrically opposite stands. On "right to know" legislation, federal OSHA not only issued a uniform national standard for manufacturers but argued in court that states were preempted from having their own standards different from federal OSHA. Then on field sanitation, Secretary Brock claims that state regulation is superior to a uniform federal standard. His claim is specious. He is not only passing the buck, he is abrogating the policy of his own agency on uniform standards and is ignoring the findings of his own staff on the need for field sanitation rules.

While I am delighted with the support for state OSHA programs evidenced in Secretary Brock's statement of October 21, 1985, the issue of state administration of the federal OSHA program is quite separate and apart from the issue of there being

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uniform standards for field sanitation nationally promulgated, and the two should not be confused.

We fully agree with the Secretary that state-administered OSHA programs are to be preferred to federally-administered ones for the very reasons which he cites. However, in a sector of our economy such as agriculture, the case for a uniform field sanitation standard administered and enforced by OSHA is overwhelming. There is widespread interstate commerce characterized by a multitude of migrant laborers who harvest crops in state after state. These migrants don't have access to the field sanitation rules upon arriving in each respective state and might not be able to read and comprehend them were they available.

Field sanitation is an occupational issue -- it is appropriate for OSHA regulation. Moreover, it is the very type of condition for which a uniform national standard is needed. Farmworkers, especially migrant farmworkers, are a mobile group and move from state to state during the growing season. The only way to insure minimum basic health standards wherever they are is to have a national standard. A crazy quilt pattern of state regulations will frustrate the very people whom the regulations are designed to help.

Secretary Brock has also stated that OSHA limitations render OSHA a less satisfactory means than state regulations for purposes of enforcing field sanitation rules.

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Our OSHA program has limited application in agriculture, in part because of jurisdictional limitations imposed by Congress and in part because of limitations in the scope of standards issued by federal OSHA. The jurisdictional limitation is found in a rider to the appropriations act for the U.S. Department of Labor. The rider states that:

> None of the funds appropriated under this paragraph shall be obligated or expended to prescribe, issue, administer, or enforce any standard, rule, regulation, or order under the Occupational Safety and Health Act of 1970 which is applicable to any person who is engaged in a farming operation which does not maintain a temporary labor camp and employs 10 or fewer employees.

While this limitation is unfortunate, it allows us to maintain OSHA jurisdiction in the case of farmers who operate migrant labor camps, regardless of the size of the camp, and most agricultural working condition problems which are reported to us involve migrant workers. Indeed, with more than 40,000 migrant workers visiting North Carolina each year, migrant workers harvest a substantial portion, and perhaps the majority, of our hand-picked crops. While we do not know the number of migrant camps in North Carolina, the State Department of Human Resources has estimated that there are in excess of 3,000 camps in our state.

By allowing OSHA to maintain jurisdiction over all employers with migrant labor camps, the rider also allows us to compensate for a jurisdictional limitation imposed upon county health departments by our state legislature. For years, health departments were prohibited from enforcing sanitation regulations

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in migrant camps with fewer than 10 workers. Two years ago, the legislature exempted camps with fewer than 13 migrant workers from coverage under the law. OSHA standards are now the only standards which offer protection to migrant workers in North Carolina who live in camps with fewer than 13 people.

I mention this for two reasons. First, Secretary Brock has claimed that state regulation would be more comprehensive than federal regulation since states have no limitations such as the rider which affects OSHA jurisdiction. In fact, North Carolina has a similar legislative proscription against public health law enforcement on small farms as does federal OSHA, and it is no easier for state governments to change their legislative acts than it is for Congress to amend the appropriations act. It is wishful thinking to claim that state regulation would be more comprehensive than federal regulation because states don't face legislative limitations.

Second, I mention our state limitation because it appears that an increasing number of farmers are dividing their migrant crews into camps of fewer than 13 people in order to avoid the application of state law. Richard Clayton, the district sanitarian for the sanitation branch of the State Department of Human Resources, reported to the N.C. Farmworker Council on October 30, 1985, that whereas local sanitarians had issued 300 permits for migrant labor camps as recently as five years ago, this year there would be only about 200 permits, a 33 percent drop, at least in part because of farmers using more

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small camps which do not need permits and fewer large ones which do need permits. Leaving regulation to the states may well result in fewer workers being covered than would be covered by OSHA action.

In addition to the jurisdictional limitation imposed upon OSHA coverage of agricultural workers by Congress, there is also a limitation in scope adopted by federal OSHA. Federal OSHA acted in 1971 to exempt agricultural employers from all OSHA standards except for standards covering temporary labor camps, anhydrous ammonia, pulpwood logging, rollover protective structures, and agriculture machine guarding. Thus OSHA protections provided freely to workers in all other occupational endeavors are denied to farmworkers. If this limitation in scope did not exist, we would not be here today describing the need for field sanitation standards for farmworkers. Sanitation standards which exist for all other occupations would already apply to agricultural work.

The history of the federal OSHA experience with field sanitation is well known to you. From 1972 to the present, federal OSHA has been studying the problem and promising to do something about it.

For each step forward that has been taken to date, yet another step has been taken backward. There has been nothing else like this in the history of OSHA. Even the promulgation of the new "Hazard Communication" standard -- the most "far reaching" OSHA standard ever promulgated by federal OSHA in the words

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of Pat Tyson, acting Assistant Secretary of Labor for OSHA, has not met nearly the same force of resistance in its establishment as has the field sanitation standard. Why NOT? Is it because the agricultural lobby is so strong that even in the face of overwhelming need, the White House will not permit federal OSHA to respond? The Secretary and the staff of the U.S. Department of Labor have both declared the magnitude of the need. The states can't respond without there being a confusing array of provisions that are unenforceable due to the state's lack of enforcement mechanisms outside of their federally or state-funded OSHA programs. And if there is anything whatsoever to be said for the states establishing field sanitation standards on their own, then it is apparent that this should be done within OSHA programs pursuant to minimum uniform standards promulgated by federal OSHA. This is precisely why the federal OSHA program was inaugurated to start with. Congress should compel it to act in this case.

What will happen if the states follow the Secretary's requested procedure in individually establishing field sanitation standards and thereafter federal OSHA determines that what the states have done, at great expense, is either inadequate or confusing, or both? Then, according to the Secretary's statement, federal OSHA will establish minimum national standards. Under the recognized doctrine of pre-emption, what the states may have done would then be mooted or severely modified in many instances, necessitating further state legislative action to clarify the resulting confusion. There is no need for this regulatory

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disarray. A uniform national standard, adopted now, will avoid much confusion later.

Having commented upon the need for a uniform national standard, let me share with you briefly the benefit of North Carolina's experience in enforcing a field sanitation standard under OSHA.

In 1981, we in North Carolina tired of waiting for federal OSHA to act. We do not maintain a staff to research and promulgate new regulations. As a matter of state law, we adopt federal OSHA standards. This assures our uniformity with national standards and assures that our standards are as effective as federal standards, which our state OSHA plan requires. Nevertheless, some crying needs cannot be ignored.

It does not take much research to document that working 10 and 12 hours a day in the hot sun without water to drink can be hazardous to your health. It also does not take much research to document that, after working in the dirt and occasionally with pesticide-treated plants, it is important to your health to be able to wash your hands before eating.

Therefore, with our limited staff, we proceeded to hold hearings in 1982 and 1983 on a field sanitation standard requiring those two components, drinking water and handwashing facilities. I have here and submit to you as Exhibit 2 of this statement the transcripts of those hearings.

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We adopted that standard during the 1983 growing season, and farmers have now had two years to become familiar with the regulations and to comply. Our 1985 State OSHA inspections have included an estimated 190 inspections where we were able to check for compliance with the field sanitation standard. Of those inspections, 27, or 14 percent, have been found to be in violation even of the basic requirements of providing clean drinking water in single-service cups or accessible handwashing facilities with soap and towels.

At the time we initiated our limited research in 1981, there were no studies that showed that lack of toilet facilities present a health problem. Some very recent studies appear to show this, and these studies need to be carefully evaluated. If federal OSHA, after evaluating those studies, issues a standard also requiring toilets in the fields, North Carolina will adopt an identical standard. As stated earlier, our research and analysis capability is limited, but we do routinely adopt whatever federal standards are issued.

I cannot impress upon you enough the importance of this issue's being addressed on a national basis, by OSHA. We in North Carolina have found a need for rules, but our acting alone has little effect upon migrants who work here a short while and move on. Only a uniform national standard will adequately serve the needs of farmworkers, and as the designee for one State OSHA program that has tried to do something on its own as well as the commissioner of labor charged with promoting the welfare of our working people, I urge you to require the U.S. Department of Labor to act on a national basis.

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"Exhibit 1"

SECRETARY OF LABOR
WASHINGTON, D.C.

October 21, 1985

The Honorable James Martin
Governor of North Carolina
Raleigh, North Carolina 27611

COPY

Dear Jim:

We recently made a determination that steps must be taken to provide additional protection for agricultural hand laborers who are exposed to a variety of serious hazards associated with inadequate drinking water, handwashing, and toilet facilities in the fields. I am convinced that the evidence compiled over the last several years by the Labor Department's Occupational Safety and Health Administration (OSHA) clearly shows the existence of a serious health problem that, unfortunately, has not been fully addressed. However, the special circumstances surrounding this problem--principally the encouraging strides already made in this area by several key States, such as yours, the unique public health nature of these particular occupational hazards, the different circumstances affecting those hazards in different States, and the legislative and practical limitations on OSHA's ability to address as completely as possible those agricultural problems--make State action, not Federal action, the more desirable alternative. Simply stated, you can do this better and with far more knowledge of local needs than we can.

I am, of course, cognizant that your agenda is already crowded with important issues requiring action at the State level, that you must carefully husband your resources, as we do those of the Federal government, and that priorities must be established. I would strongly urge that you include this important matter on your agenda as a priority item. Obviously, this will require close study of the issues, and we are prepared to assist you in this regard.

I would, therefore, ask that you designate a key official in your State as a liaison with the Department of Labor on this issue. Please notify me as soon as possible of that individual's name, title and telephone number, so that we can have an OSHA official contact that person to describe in detail the problem, and to discuss possible State action and further assistance by

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COMMISSIONER'S OFFICE

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"Exhibit 1"

the Department. As you are aware, your State is already operating an OSHA approved and funded occupational safety and health State plan administered by Commissioner of Labor John C. Brooks. Your field sanitation efforts may be included under your approved plan, and if you so desire, Commissioner Brooks may serve as your designated key official. I am enclosing a copy of a Federal Register notice setting forth guidelines for developing and enforcing State field sanitation standards for your information.

Finally, I would urge you to give this issue your immediate attention. In order to preclude the need for Federal action in this area, States must have issued their own standards, and provided for adequate enforcement within the next 18 months. I look forward to working with you and officials in your State in this important effort. Please call if you wish to discuss this further.

Very truly yours,

WILLIAM E. BROCK

WEB:wrf

Enclosure

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STATEMENT OF JAN HARTKE, ON BEHALF OF TONEY ANAYA, GOVERNOR OF NEW MEXICO

Mr. HARTKE. Thank you, Mr. Chairman, for allowing the State of New Mexico to be given the opportunity to testify today.

I am here representing Gov. Toney Anaya of New Mexico and I would like to either read the statement or take excerpts out of it and submit the rest of the testimony for the record.

Mr. FRANK. Without object we will put the whole statement in. You can proceed with the highlights.

Mr. HARTKE. I understand the problems.

Mr. Chairman and members of the Employment and Housing Subcommittee, I appreciate this opportunity to present the State of New Mexico's concerns regarding provision of field sanitation protection for this Nation's farmworkers.

Congress created the Occupational Safety and Health Administration "To insure so far as possible every working man and woman in the nation safe and healthful working conditions."

Currently farmworkers are the only segment of our Nation's work force denied the legal right to basic sanitation facilities and drinking water at their worksite. No one can deny that sanitation is crucial to healthful working conditions. It is also the hallmark of a humane and developed country.

Consequently, Secretary Brock's failure to adopt a field sanitation standard for farmworkers violates the purpose and mandate given OSHA by Congress to extend health and safety safeguards to all employees. The Secretary's decision to delay protection of farmworkers operates as a form of discrimination against the part of our work force which is in great need and which is least equipped to seek Government protection.

The Secretary's decision, in our judgment, is particularly unjustified and ill conceived given the nature of the problem. Of all segments of our work force farmworkers are probably the most mobile, crossing a number of State lines as they follow the planting and harvesting of seasonal crops. Lack of field sanitation contributes to an unusually high level of parasitic and infectious diseases: skin disease, heat stroke, pesticide poisoning, diarrhea and other illnesses. Unlike most hazards found at worksites, infectious and parasitic diseases migrate across boundaries along with the farmworker.

The failure of one State to provide adequate sanitation may directly and unfairly affect the population of other States, even those States that have adopted meaningful protection for farmworkers. Without a uniform national standard, migrant farmworkers may spread infection as they travel from an unregulated State to one that has adequate regulation.

This situation obviously creates an unjust public health burden on those States that have in good conscience promulgated a State field sanitation standard to combat farmworker health problems. In short, more than most regulations sanitation protection demonstrates precisely the problem envisioned by Congress when it opted for a nationwide regulatory scheme to address occupational health and safety problems throughout the country.

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The legislative history of the Occupational Safety and Health Act delineates the responsibility given Federal OSHA by this body. This history makes it clear that the Federal Government is to take the lead rather than a back seat to the States when it comes to establishing standards for safe and healthful workplaces.

No one has seriously disputed that only a relative few States have modern laws relating to occupational health and safety and have devoted adequate resources to their administration and enforcement. Moreover, in a State-by-State approach, the efforts of the more vigorous States are inevitably undermined by the shortsightedness of others. The inadequacy of anything less than a comprehensive, nationwide approach has been exemplified by experience with the chemical betanaphythlamine. A chemical so toxic that any exposure at all is likely to cause the development of bladder cancer over a period of years. The Commonwealth of Pennsylvania discovered this extreme effect of betanaphythlamine and banned its use, manufacture, storage or handling in that Staten, but production of this lethal chemical has begun in another State where legislation is inadequate. The exposure continues today.

Congress clearly never intended for OSHA to rely on multiple and inconsistent State regulations. Congress did intend nothing less than a comprehensive, nationwide approach and, at a minimum, a Federal floor for safety and health in the workplace. Secretary Brock's decision has negated the basic premise of the act.

New Mexico is a small State with a small population, low per capita income, limited technical and economic resources, and sharply diminishing tax base with which to perform the multiple functions expected of State government. Because of the concern for farmworkers in our State, we have begun the process of adopting a field sanitation standard.

Under Secretary Brock's scheme, we may expend valuable resources only to have the Secretary subsequently adopt a Federal standard after deciding that States which may or may not include New Mexico have failed to respond adequately to his guidelines. This not a unlikely scenario. Many States may opt for inaction given the possibility that OSHA will adopt a standard at the end of the time period.

To require individual States to enter into their own lengthy rulemaking proceedings constitutes a waste of scarce resources and needless duplication of effort.

The Federal Government in our judgment has abdicated its responsibility to provide for the health and safety of one of the most disadvantaged groups in the country, in direct contravention of the requirements of the Occupational Safety and Health Act.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Hartke follows:]

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STATE OF NEW MEXICO
OFFICE OF THE GOVERNOR
SANTA FE
87503

TONEY ANAYA
GOVERNOR

STATEMENT

OF

JAN HARTKE

ON BEHALF OF

TONEY ANAYA, GOVERNOR OF

THE STATE OF NEW MEXICO

CONCERNING THE

FIELD SANITATION STANDARD

BEFORE THE

EMPLOYMENT AND HOUSING SUBCOMMITTEE

WASHINGTON, D.C.

November 6, 1985

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Mr. Chairman and members of the Employment and Housing Subcommittee, I am Jan Hartke appearing on behalf of Toney Anaya, Governor of the State of New Mexico. I appreciate this opportunity to present the State of New Mexico's concerns regarding provision of field sanitation protection for this nation's farmworkers.

New Mexico would like to express its dismay at the continued failure of the Department of Labor to provide essential public health protection for farmworkers. The inaction of the Department contradicts directly the agency's acknowledgement of the "unacceptable risks to the health of farmworkers arising from the currently inadequate provisions of sanitary facilities and drinking water at their worksites." Field Sanitation: Notice of Reopening of Rulemaking Record, p. 4 (October 17, 1985).

Background

After thirteen years of rulemaking on a standard providing field sanitation for farmworkers, on April 16, 1985, the Assistant Secretary for the Occupational Safety and Health Administration announced his decision not to issue a field sanitation standard. When William Brock became Secretary of Labor, he agreed to review Assistant Secretary Rowland's decision. On September 10, 1985, Secretary Brock announced his decision to give states eighteen months in which to enact field sanitation standards; if states fail to act, he has committed federal OSHA to adopt a standard by September, 1987.

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THE OCCUPATIONAL SAFETY AND HEALTH ACT MANDATES SAFE AND HEALTHFUL WORKPLACES FOR EVERY WORKING MAN AND WOMAN

Congress created the Occupational Safety and Health Administration (OSHA) "to assure so far as possible **every** working man and woman in the Nation safe and healthful working conditions..." Currently, farmworkers are the only segment of our nation's workforce denied the legal right to basic sanitation facilities and drinking water at their worksite. No one can deny that sanitation is crucial to healthful working conditions. It is also the hallmark of a humane and developed country. Consequently, Secretary Brock's failure to adopt a field sanitation standard for farmworkers violates the purpose and mandate given OSHA by Congress -- to extend health and safety safeguards to all employees. The Secretary's decision to delay protection of farmworkers operates as a harsh form of discrimination against a part of our workforce which is in great need and which is least equipped to seek governmental protection.

While the Secretary's approach would appear to begin the process of providing sanitation facilities, the Secretary's decision denies farmworkers the basic protection mandated by the Occupational Safety and Health Act. In the notice establishing guidelines for reopening the Field Sanitation Standard rulemaking, it was announced that a federal OSHA standard would not be adopted if "there has been a sufficient increase in the number of states with adequate standards to

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assure that the vast majority of hand laborers working in the fields who presently are not covered by state standards will be protected" at the end of the eighteen month period. Id at 12. These guidelines are not adequate; it is not sufficient to protect the "vast majority." To fulfill its mandate, OSHA must provide protection for all farmworkers.

RELIANCE ON STATE ACTION CONTRAVENES BASIC PUBLIC HEALTH PRINCIPALS, CALLING FOR A UNIFORM APPROACH TO DISEASE THAT RESPECTS NO STATE BOUNDARIES

The Secretary's decision is particularly unjustified and ill-conceived given the nature of the problem. Of all segments of our workforce, farmworkers are probably the most mobile, crossing a number of state lines as they follow the planting and harvesting of seasonal crops. Lack of field sanitation contributes to unusually high levels of parasitic and infectious diseases, urinary infections, skin disease, heat stroke, pesticide poisoning, diarrhea and other illnesses. Unlike most hazards found at worksites, infectious and parasitic diseases migrate across boundaries along with the farmworker.

The failure of one state to provide adequate sanitation may directly and unfairly affect the population of other states, even those states that have adopted meaningful protection for farmworkers. Without a uniform national standard, migrant farmworkers may spread infection as they travel from an unregulated state to one that has adequate regulation. This situation obviously creates an unjust public health burden on those states that have in good conscience promulgated a state field sanitation standard to combat farmworker health problems. In short, more than most regulation, sanitation protection demonstrates precisely the problem envisioned by Congress when it opted for a nationwide regulatory scheme to address occupational health and safety problems throughout the country.

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CONGRESS INTENDED FOR THE FEDERAL GOVERNMENT, NOT THE STATES, TO ESTABLISH MINIMAL STANDARDS FOR SAFE AND HEALTHFUL WORKPLACES

Declaring that state action is preferable to, and more effective than, federal action, the Secretary has given states eighteen months in which to issue standards to provide handwashing, toilet, and drinking water facilities for farmworkers. Should states fail to take the necessary action, he has committed OSHA to issue a field sanitation standard by Septem' . 1987. The approach adopted by the Secretary, while an improvement over Assistant Secretary Rowland's refusal to provide any field sanitation standard whatsoever, still fails to conform with the charge given by Congress.

The legislative history of the Occupational Safety and Health Act delineates the responsibility given federal OSHA by this body. This history makes it clear that the federal government is to take the lead rather than a backseat to the states when it comes to establishing standards for safe and healthful workplaces:

> No one has seriously disputed that only a relatively few states have modern laws relating to occupational health and safety and have devoted adequate resources to their administration and enforcement. Moreover, in a state-by-state approach, the efforts of the more vigorous states are inevitably undermined by the shortsightedness of others. The inadequacy of anything less that a comprehensive, nationwide approach has been exemplified by experience with the chemical betanaphythylamine - a chemical so toxic that any exposure at all is likely to cause the development of bladder

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> cancer over a period of years. The Commonwealth of Pennsylvania discovered this extreme effect of betanaphthylamine and banned its use, manufacture, storage or handling in that State, but production of this lethal chemical has begun in another State where legislation is inadequate. The exposure to betanaphythlamine continues today.
>
> In sum, the chemical and physical hazards which characterize modern industry are not the problem of a single employer, a single industry, nor a single state jurisdiction. The spread of industry and the mobility of the workforce combine to make the health and safety of the worker truly a national concern.
> S.Rep. No. 91-1282, 91st Cong., 2d Sess. reprinted (1970) U.S. Code Cong. & Ad. News 5177, 5180.

Congress clearly never intended for OSHA to rely on multiple and inconsistent state regulations. Congress did intend nothing less than a comprehensive, nationwide approach and, at a minimum, a federal floor for safety and health in the workplace. Secretary Brock's decision has negated the basic premise of the Act.

THE SECRETARY'S DECISION UNNECESSARILY BURDENS STATE GOVERNMENT

OSHA's Notice of Reopening the Rulemaking Record justifies the Secretary's approach in part by relying on the fact that thirteen states covering as many as 75% of the farmworker population have already adopted sanitation regulations.

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OSHA admits, however, that many of these existing regulations are deficient in both content and enforcement. Of course, many other states fail to provide any protection at all. Secretary Brock has thus placed an unreasonable burden on individual states to develop separate regulatory schemes for field sanitation. Under the Secretary's approach, states are directed to develop new standards or improve existing standards. OSHA will then "evaluate the responses of the states ... to determine whether state programs are adequate to protect farmworkers."

New Mexico is a state with a small population, low per capita income, limited technical and economic resources, and a sharply diminishing tax base with which to perform the multiple functions expected of state government. Because of the concern for farmworkers in our state, we have begun the process of adopting a field sanitation standard. Under Secretary Brock's scheme, we may expend valuable resources only to have the Secretary subsequently adopt a federal standard after deciding that states which may or may not include New Mexico have failed to respond adequately to his guidelines. This is not an unlikely scenario. Many states may opt for inaction given the possibility that OSHA will adopt a standard at the end of twenty-four months.

Considerable resources have already been utilized to develop what OSHA admits is "an extensive rulemaking record ... including many prehearing comments, testimony at five public hearings and additional exhibits and post hearing comments...." To require individual states now to enter into their own lengthy rulemaking proceedings constitutes a waste of scarce resources and needless duplication of effort. This unwarranted expenditure of state resources becomes all the more inexcusable because it also means even greater delay in affording our Nation's farmworkers with vital public health protection.

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Under the Occupational Safety and Health Act, New Mexico opted to share responsibility for the promotion of occupational health and safety in our state's workplaces. By its action, the Department of Labor has unilaterally changed its relationship with the state's program. The federal government has also abdicated its responsibility to provide for the health and safety of one of the most disadvantaged groups in the country, in direct contravention of the requirements of the Occupational Safety and Health Act.

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Mr. FRANK. Mr. Fields, we'll hear from you and then I will question. And I want to thank you for responding to our invitation. We asked, specifically, that the Farm Bureau be represented and I appreciate your willingness to do that.

STATEMENT OF C.H. FIELDS, AMERICAN FARM BUREAU FEDERATION

Mr. FIELDS. Thank you. I would ask that the full statement be admitted into the record and I will try to summarize to save the committee some time.

My name is C.H. Fields. I am the assistant director, national affairs, of American Farm Bureau Federation.

We believe agricultural employers as a matter of good employee relations should make sanitation facilities available to their workers. We know many of them do although we have no way of knowing how many. In a great many small farm situations the central facilities on the farm are made available to the workers. In many instances they're the same facilities available to the farmer and the members of the family.

In larger operations, where the work is performed a considerable distance from the farm headquarters, it is not feasible to make the central facilities readily accessible to large numbers of workers. In these situations, it is necessary to provide portable facilities within a reasonable distance from the fields where work is performed.

No one knows how many agricultural employers voluntarily provide access to sanitation facilities. Centaur Associates collected guesses on this from knowledgeable persons in 46 counties in States that produce most of the labor-intensive crops, with actual field surveys in only four counties. Centaur estimated that 12 percent of the farms in States without field sanitation regulations, provide such facilities voluntarily.

The question is not whether farmworkers should have access to sanitary facilities. The question is whether it is necessary or desirable for the Federal Government to mandate that such facilities be provided. We have no quarrel with the basic premise stated by NIOSH and OSHA that the relationship between poor sanitation and disease is well known and documented. However, we note that NIOSH concluded that quantitative data on disease prevalence among agricultural workers is not available, and more specifically, insufficient data exists on rates of infection or incidence of heat exposure among farmworkers. Similarly, very limited data exists on the adequacy of drinking water and sanitation facilities in fields. We do not agree with NIOSH that a Federal field sanitation standard can be supported purely on the basis of good public health practice.

We hold to the basic belief that there must be something in this country that does not have to be regulated by the Federal Government. During the last 15 years, while the Federal Government has been discussing, studying and responding to court orders on this issue, 13 State governments have been acting. While it is true that the State requirements vary somewhat from the standards proposed by OSHA last March and that some of them need to be strengthened to match the OSHA proposal, others go further than

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the OSHA proposal. It is clear that with a few exceptions the major agricultural employment States have been moving to take care of the situation. It is also clear to us that more workers will be provided access to sanitation facilities through State regulation rather than Federal.

We agree with Secretary Brock that this is a matter that can best be handled at the State level. Crop and climatic conditions vary widely from State to State. Most States have relatively few hired workers on farms that employ more than 10 people. The Secretary has made it clear that the limited data available to him and the testimony of expert witnesses has convinced him that it is necessary to provide sanitation facilities to farmworkers and that he will promulgate a Federal regulation requiring agricultural employers who employ 11 or more field hand laborers to provide such facilities, unless additional action is taken at the State level during the next 18 months to adequately take care of the targeted worker population.

We do not agree that the State regulatory enforcement is in general inferior to Federal enforcement. And Secretary Brock has wisely included some standards of enforcement in his notice of October 21. We are convinced that with some enhancement of the regulations that now exist in two or three States, 85 percent of the field-hand workers on farms that employ 11 or more workers can be provided with acces to the necessary sanitation facilities. We do not know of any emergency situation that would require Federal action before the time period proposed by the Secretary.

In summary, we believe that the Secretary of Labor has the issue of field sanitation in agriculture well in hand. In line with the Reagan administration's avowed goal of reducing Federal regulation and of encouraging more responsibility at the State and local levels of government, Secretary Brock has observed that several States have already acted responsibly on this issue and has decided to give State governments another 18 months to demonstrate that the problem can be handled at the State level. We do not believe that any action is needed in the Congress on this issue.

[The prepared statement of Mr. Fields follows:]

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★ FARM BUREAU ★

•• the nation's largest general farm organization ••

STATEMENT OF THE AMERICAN FARM BUREAU FEDERATION
TO THE SUBCOMMITTEE ON EMPLOYMENT AND HOUSING
OF THE HOUSE GOVERNMENT OPERATIONS COMMITTEE
REGARDING FIELD SANITATION REGULATIONS IN AGRICULTURAL EMPLOYMENT

Presented by C. H. Fields
Assistant Director, National Affairs Division

November 6, 1985

American Farm Bureau Federation
Washington Office — 600 Maryland Ave., SW, Washington, DC 20024. Phone: (202) 484-2222

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STATEMENT OF THE AMERICAN FARM BUREAU FEDERATION
TO THE SUBCOMMITTEE ON EMPLOYMENT AND HOUSING
OF THE HOUSE GOVERNMENT OPERATIONS COMMITTEE
REGARDING FIELD SANITATION REGULATIONS IN AGRICULTURAL EMPLOYMENT

Presented by C. H. Fields
Assistant Director, National Affairs Division

November 6, 1985

The American Farm Bureau Federation is a nonprofit organization of 3.3 million member families in 48 states and Puerto Rico who are members of 2,762 County Farm Bureaus. Farm Bureau membership includes at least 75 percent of the farmers and ranchers in this country and approximately 85 percent of the agricultural employers.

Less than half of the farmers and ranchers in this country employ non-family labor--about 750,000. Most of the work on farms is performed by farmers themselves and members of their families.

The bulk of the 750,000 agricultural employers employ fewer than 11 workers. Detailed and current agricultural employment statistics are not readily available. However, according to an analysis of the data available from the 1982 agricultural census, a total of 95,878 farms employed more than 10 workers at that time. The baseline analysis prepared for OSHA by Centaur Associates states that approximately 565,000 farms produce fruits, vegetables, nuts, berries, tobacco, cotton, sugarcane, sugar beets, and hops, where the bulk of the seasonal employment takes place. Centaur estimates that only about 9 percent of those farms are likely to employ 11 or more hired farmworkers, based on labor requirements for certain production levels of those crops. Obviously the Centaur estimate is incorrect.

Agricultural employment figures can be very tricky. It is one thing to talk about the number of persons who worked on a farm or ranch during a particular year, and quite another thing to calculate how many persons were so employed at any one time. The reason is that many migrant and seasonal workers hold three or more jobs at different places of employment during a given year. Others confuse the situation by calling all farmworkers or all seasonal farmworkers "migrants." The most recent figures from the Department of Agriculture indicate that the number of migrant farmworkers is only 115,000, or about a fifth as many as 10 years ago. About 90 percent of the seasonal workers in agriculture are not migrants and often work within a few miles of their regular homes.

Centaur Associates states that "case studies indicate that migrant farmworkers are about 50 percent of peak affected employment." That statement no doubt arises from a general confusion about the meaning of the term "migrant." Centaur defines it to mean any person who works in a county in which he does not reside. That is a totally inadequate definition, since a lot of local commuter workers cross county and state lines to go to work each day on farms and return to their regular places of residence at night. As defined by the Migrant and Seasonal Agricultural Workers Protection Act, migrant workers are seasonal (as opposed to year-around) workers who take up temporary residence away from their regular homes.

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The question as to whether the federal government should require agricultural employers to make sanitation facilities available to their employees has been tossed around for the last 15 years.

We believe that agricultural employers, as a matter of good employee relations, should make sanitation facilities available to their workers. We know that many of them do so, although we have no way of knowing how many. In a great many small farm situations, the central facilities on the farm are made available to the workers. In many instances they are the same facilities available to the farmer and members of his family.

In larger operations, where the work is performed a considerable distance from the farm headquarters, it is not feasible to make the central facilities readily accessible to large numbers of workers. In these situations, it is necessary to provide portable facilities within a reasonable distance from the fields where work is performed.

No one knows how many agricultural employers voluntarily provide access to sanitation facilities. Centaur Associates collected guesses on this from knowledgeable persons in 46 counties in states that produce most of the labor-intensive crops, with actual field surveys in only four counties. Centaur estimated that 12 percent of the farms in states without field sanitation regulations voluntarily provided sanitation facilities.

The question is not whether farmworkers should have access to sanitary facilities. The question is whether it is necessary or desirable for the federal government to mandate that such facilities be provided. We have no quarrel with the basic premise stated by NIOSH and OSHA that the relationship between poor sanitation and disease is well-known and documented. However, we note that NIOSH concluded that quantitative data on disease prevalence among agricultural workers is not available, and more specifically, insufficient data exists on rates of infection or incidence of heat exposure among farmworkers. Similarly, very limited data exists on the adequacy of drinking water and sanitation facilities in fields. We do not agree with NIOSH that a federal field sanitation standard can be supported purely on the basis of good public health practice.

We hold to the basic belief that there must be something in this country that does not have to be regulated by the federal government. During the last 15 years, while the federal government has been discussing, studying and responding to court orders on this issue, 13 state governments have been acting. While it is true that the state requirements vary somewhat from the standards proposed by OSHA last March and that some of them need to be strengthened to match the OSHA proposal, others go further than the OSHA proposal. It is clear that with a few exceptions the major agricultural employment states have been moving to take care of the situation. It is also clear to us that more workers will be provided access to sanitation facilities through state regulation rather than federal.

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We agree with Secretary Brock that this is a matter that can best be handled at the state level. Crop and climatic conditions vary widely from state to state. Most states have relatively few hired workers on farms that employ more than 10 people. The Secretary has made it clear that the limited data available to him and the testimony of expert witnesses has convinced him that it is necessary to provide sanitation facilities to farmworkers and that he will promulgate a federal regulation requiring agricultural employers who employ 11 or more field hand laborers to provide such facilities, unless additional action is taken at the state level during the next 18 months to adequately take care of the targeted worker population.

We are convinced that with some enhancement of the regulations that now exist in two or three states, and with the promulgation of regulations in a few additional states, 85 percent of the hand field workers on farms that employ 11 or more workers can be provided with access to the necessary sanitation facilities. We do not know of any emergency situation that would require federal action before the time period proposed by the Secretary.

, It is unfortunate that this issue has been clouded with untruths and half-truths. Statements have been made repeatedly that the public food supply is endangered by the lack of field sanitation facilities. This nation's food supply is monitored vigorously by the Food and Drug Administration. We have seen no testimony that they have found food in the markets contaminated in the fields by workers who do not have available or do not make use of sanitation facilities. Such statements attempt to play upon the fears of the public and have no place in a reasoned examination of this issue.

It is implied that because some employers may not furnish drinking water to workers in the field, that such workers are working without the availability of drinking water. That is ridiculous. No workers would or could work for very long in a field without having drinking water available. Many prefer to carry their own thermos jugs into the field.

There has been a deliberate effort to mislead the public on the question of pesticide poisoning of farmworkers. The World Resources Institute (WRI) concluded in a report that 300,000 U.S. farmworkers are poisoned each year on the job. The Minnesota Pesticide Information and Education group analyzed how the WRI arrived at that figure. In an article for the Journal of Occupational Medicine, Ephraim Kahn stated that in his opinion, California doctors report only one percent of the pesticide poisonings which occur in that state. In later study, Molly Coye used Kahn's assumption as the basis for her calculations. In 1982, there were 235 cases of presumed farmworker poisonings reported in California. Using Kahn's assumption that only one percent of the cases are reported, Coye multiplied 235 by 100, resulting in the conclusion that 23,500 or roughly 7.8 percent of California's 300,000 farmworkers suffered pesticide-related illnesses in 1982. Coye then extrapolated that since 7.8 percent of California workers suffer from pesticide-related illnesses, that

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figure must carry over nationwide. Therefore, 7.8 percent of the country's four million farmworkers supposedly suffer pesticide-related illnesses, and 7.8 percent of four million equals 312,000. Thus the headline news, "300,000 Poisoned Annually,"

The false premises of this kind of analysis are evident. In the first place, four million farmworkers do not exist. The number of hired farmworkers is no more than 2.5 million, and the number of hand laborers is even fewer. That fact alone would cut the derived figure in half, not to mention the other defective ways used to arrive at that figure.

We do not deny that the handling and use of agricultural chemicals is a matter that requires regulation, employee training, and constant vigilence on the part of both employers and employees. The regulation of pesticide use, however, does not lie within the jurisdiction of OSHA. That is a matter for the Environmental Protection Agency. We are currently serving on a committee appointed by EPA to negotiate the development of an expanded regulation on the handling and use of pesticides to protect the health of farmworkers. It is true that the availability of hand-washing facilities is important where anyone is exposed to a toxic chemical. We are confident that EPA will take that fact into consideration.

As we move toward mandating the furnishing of field sanitation facilities in agricultural employment, either at the state or national level, there are still questions that need to be seriously addressed.

It is clear from reading the risk assessment analyses prepared for OSHA by Dr. Gangarosa and Dr. Ortiz, that the higher incidences of parasitical infections and of certain diseases that are assumed from the limited scientific data available will not be substantially reduced among farmworkers unless the conditions at their places of residence are sanitary and unless the workers who are provided access to field sanitation facilities make use of them.

We have previously suggested that it would be instructive to study before and after results in two or three of the states, where such regulations have been in existence for several years and where the regulations match or exceed the proposed federal standard to determine whether the existence of such regulations have alleviated the perceived health problems.

It is evident to anyone who takes the trouble to visit fields where sanitation facilities are available that the use of the facilities is limited. We do not believe it is feasible for agricultural employers to require the use of the facilities as a condition of continuing to work. We do not generally have a surplus of agricultural workers. Employers can do a certain amount of education and persuasion, but realistically, that is about as far as they can go.

Proponents of a federal standard insist that state regulations are not and will not be enforced and seem to believe that federal

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enforcement is automatically more rigorous. We do not agree. While it is true that enforcement varies somewhat from state to state, our experience is that in most states that have a state-operated worker health and safety program, the enforcement is more rigorous than provided by the limited personnel and resources of federal OSHA. To put this issue to rest, Secretary Brock has wisely included in his latest notice that the Department of Labor will require certain minimum standards of enforcement as a part of its assessment as to whether the states are doing a sufficient job in the area of field sanitation 18 months from now. We believe those stated standards are reasonable and can be met by the state agencies.

In summary, we believe that the Secretary of Labor has the issue of field sanitation in agriculture well in hand. In line with the Reagan Administration's avowed goal of reducing federal regulation and of encouraging more responsibility at the state and local levels of government, Secretary Brock has observed that several states have already acted responsibly on this issue and has decided to give state governments another 18 months to demonstrate that the problem can be handled at the state level. We do not believe that any action is needed in the Congress on this issue.

We appreciate the opportunity to present our views.

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Mr. FRANK. Thank you. Let me just begin the questioning.

We keep hearing about the 13 States, sometimes I think of a road company of "1776." [Laughter.]

One of those 13 States denies that it's one of the 13 States.

I have a letter which I ask you now to consent to put into the record from the Colorado Department of Health signed by Charles L. Stout, director of the migrant health program and Daniel Gossert, director of family health service division, Colorado Department of Health. It says in part:

> Currently, Colorado has no enforceable field sanitation standards nor are there means in place to enforce such standards if they did exist.

Secretary Brock's ability through his Department to monitor future progress has been called into question in my mind by the fact that he insists that Colorado has a standard that Colorado says it doesn't have. I would think that all defenders of federalism would be inclined to agree that Colorado better understands whether or not it has a rule than does OSHA. What it says is:

> Until 1978 when Colorado's occupational health program was terminated, one rule called for these amenities to be provided in the field work sites. However, even if this rule were still in force, it would extend protection to only a few workers. It is our understanding that this old rule has been mistaken for current statutory authority.

[The information referred to follows:]

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COLORADO DEPARTMENT OF HEALTH
Richard D. Lamm
Governor
Thomas M. Vernon, M.D.
Executive Director

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NOV -5

October 31, 1985

The Honorable Barney Frank, Chairperson
Employment and Housing Subcommittee
Room B-349-A
Rayburn House Office Building
Washington, D.C. 20515

Dear Representative Frank:

We are writing you today in reference to the hearings you will hold on November 6, 1985 regarding the need for a federal law requiring Field Sanitation Standards for America's farmworkers. We would like to offer two very brief observations from our perspective as you consider this important measure. We would also like to share with you what is currently happening in Colorado in a concurrent effort to develop and implement a set of statewide Field Sanitation Standards.

First, as a point of clarification: Although Colorado has been identified as one of thirteen states that currently has a field sanitation law, in fact, no statutory authority currently exists in Colorado that calls for farmworkers to be provided toilets, handwashing capability and drinking water. Until 1978 when Colorado's occupational health program was terminated, one rule established under that program called for these amenities to be provided in field work sites adjacent to farmworker housing. However, even if this rule were still in force, it would extend protection to only a few of today's farmworkers. It is our understanding that this old rule has been mistaken for current statutory authority to require such standards and to provide for inspection and monitoring activities. Currently, Colorado has no enforceable field sanitation standards nor the means in place to enforce such standards if they did exit.

OBSERVATIONS

1. The necessity for Field Sanitation Standards is very well documented. As OSHA has documented in more than three thousand pages of testimony gathered in 1984 and summarized well in the documents prepared by Jesse C. Ortiz and Eugene Gangarosa, from a health perspective, the need is superbly stated. It seems to us that the only unanswered questions remaining are those related to when they shall be implemented and how they shall be implemented.

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2. The transmission of disease does not respect geographical or geopolitical boundries. As a matter of public health, migrant farmworkers need protection while moving within our state, and since diseases are transmitted by people, there is concern for what public health measures exist in other states to prevent the spread of disease into and out of Colorado. Thus, the problem is one of concern to more than just one state jurisdiction.

EVENTS IN COLORADO

In January 1984, a bill (S.B. 121, attached) was introduced in the Colorado Legislature. It included a one-year grace period to allow for opportunity to develop appropriate, cost-effective means of compliance and local enforcement through a relatively low system of fines. No provision was made for inspection or monitoring activities. The bill was heard by the Senate Agriculture Committee. Nine persons spoke in favor of the measure. Although no public testimony was offered in opposition to the bill, it lost on a four to three vote.

Following this committee action, members of the women's caucus of the Colorado Legislature, responding to both health and human dignity concerns, introduced a Joint Resolution (HJR 1020, attached) that called for voluntary compliance on the part of Colorado's fruit and vegetable producers with regard to toilet facilities and drinking water. This resolution, carrying 53 co-sponsors was passed in both chambers by comfortable majorities.

In 1985, a limited survey was undertaken in two areas of Colorado (north Central and the Arkansas Valley) where labor intensive agriculture is widespread. Preliminary analysis (final report expected in mid-November) indicates that fewer than five percent (5%) of the 155 fields surveyed had available all three of the amenities under discussion. Handwashing was available in only two instances, and drinking water, where available, was most often worker provided and always called for shared drinking from the same container or cup. Although this survey covered only seven of Colorado's twenty-six counties where labor intensive crops are grown, anecdotal evidence suggests that the rate of voluntary compliance with the standard is similarly low in all twenty-six counties.

Recognizing the continuing need for legislative action, a coalition of health, church and rural organizations is currently working on a bill to be introduced in the 1986 legislature (deadline for submission is December 1, 1985). The bill currently being developed will most probably continue to be very light on enforcement and will not speak to inspection and monitoring activity. It is anticipated that no fiscal note will be attached to provide for either education or enforcement activities. Although the Colorado Field Sanitation proposal has bipartisan sponsors in the Colorado House and Senate and is solidly backed by the Colorado Medical Society (see attachment #3) as well as numerous other statewide organizations, there is no assurance that it will pass the 1986 legislative session.

If the bill being developed does pass the 1986 Colorado legislative session,

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it will most probably not meet the guidelines recently (October 18, 1985) released by the U.S. Secretary of Labor. Those guidelines indicated that standards comparable to the 1984 standards proposed by OSHA must be in place within eighteen months or OSHA will issue a federal standard. Because only thirty working days were available between the Department of Labor announcement and the deadline for introduction of bills in the Colorado Legislature (December 1, 1985) it is doubtful that the bill will be able to be modified to the extent that Secretary Brock's guidelines will be followed.

The issue of field sanitation in Colorado is significant and has generated great interest and concern among various groups, including several state legislators, the Colorado Migrant and Rural Coalition, the Colorado Social Legislation Committee and the Colorado Medical Society. We are hopeful that field sanitation legislation will be enacted by the 1986 Colorado Legislature. However, we recognize the nature of the problem as one of concern to the many states through which migrant farmworkers travel, work and live during the growing season. As such, we recognize that the problem is both a state and a national issue.

Sincerely,

Charles L. Stout, M.P.H.
Director
Colorado Migrant Health Program
Colorado Department of Health

Daniel J. Gossert, ACSW, M.P.H.
Director
Family Health Services Division
Colorado Department of Health

CLS:lm

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Mr. FRANK. So, the Labor Department is wrong according to the State of Colorado in its insistent invocation of Colorado as 1 of the 13.

One of the States that they talk about as making progress is Wisconsin. I would like to put in the record at this point a statement from our colleague, Mr. Kleczka.

[The prepared statement of Mr. Kleczka follows:]

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STATEMENT OF

CONGRESSMAN GERALD D. KLECZKA

BEFORE THE SUBCOMMITTEE ON EMPLOYMENT AND HOUSING

OF THE GOVERMENT OPERATIONS COMMITTEE

* * * *

FIELD SANITATION STANDARDS

* * * *

NOVEMBER 6, 1985

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STATEMENT OF
CONGRESSMAN GERALD D. KLECZKA
BEFORE THE SUBCOMMITTEE ON EMPLOYMENT AND HOUSING
OF THE GOVERNMENT OPERATIONS COMMITTEE
NOVEMBER 6, 1985

Mr. Chairman,

First, I would like to commend you for your work in the effort to establish nation-wide field sanitation standards for farmworkers. I applaud your efforts to safeguard the health and welfare of our nation's farmworkers as well as the health of our nation's consumers.

The debate on this matter is centered on a very simple concept -- we are talking about justice and human dignity. But we have been talking -- without taking action -- for over 13 years. This is disgraceful. There is no way to justify 13 years of history which have denied basic dignity to farmworkers. The Department of Labor has been promising to promulgate such standards since 1972, but there has been an indefensible series of delays and postponements. The most recent delay came a few months ago when Secretary Brock suggested that we wait 18 months in order to allow states to develop and implement their own field sanitation laws.

This clearly seems to be another callous delaying tactic, but beyond that, I have serious problems with this decision. As I see it, this decision is unprecedented. The Department of Labor is attempting to transfer its responsibilities onto the shoulders of the States. It should be noted that when the Congress was debating the Occupational Safety and Health Act in 1970, a similar question was raised. The debate was on whether this act was even needed, given the fact that many States had their own standards. It was decided then that the State standards were inconsistent and often ineffective. I maintain that the same is true in this debate.

A study compiled for OSHA in April 1984 shows that even though 13 States have laws protecting the health of field workers, more than half of the workers have no drinking water available during the day. More than one-third of the farmworkers do not have access to toilet facilities, and 1 in 5 do not have handwashing facilities. I do not mean to discredit the efforts of the few States which have pioneered in this matter, however, I feel that these facts illustrate the problems of enforcement.

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My own State of Wisconsin recently adopted field sanitation standards which will become effective January 1, 1986. These standards, however, will only apply to migrant workers due to restrictions in the State statutes. The State is unable to promulgate like standards for all agricultural workers. I recently received a letter from the Secretary of Wisconsin's Department of Industry, Labor and Human Relations, Mr. Howard Bellman, which drew my attention to this inequity and urges the adoption of federal standards which will correct this problem. I feel that we should give Mr. Bellman's concern serious consideration, for this is not a situation which is unique to Wisconsin.

The promulgation of federal field sanitation standards is the only way to ensure the protection of all farmworkers. It should be obvious to all participants in this debate that, since many farmworkers are migrants, and since the nature of their work requires them to cross state boundaries, a uniform federal standard is the only way to ensure that their health and welfare will be protected. Furthermore, since Secretary Brock's recent comments leave open the possibility that in some States, no such standards will be in effect, many workers -- both migrants and local workers -- will not be covered at all.

I am quite concerned about the vague language that Secretary Brock has used in spelling out how many States would be required to adopt standards. He has commented that there must be a "sufficient increase...to assure that the vast majority of hand laborers working in the fields not presently covered by state standards will be protected." What will constitute a "sufficient increase?" Five States, perhaps ten? Or will it be determined by percentages of workers? However, since the some of the workers migrate from state to state, how can this be determined? Clearly, this leaves open the possibility that the Department will continue to refuse to take action. I feel that it is incumbent upon the Congress to ensure that this does not happen.

What kind of health risks are involved for farmworkers? The lack of drinking water for workers in the fields can cause severe dehydration, heat cramps and heat stroke. A lack of washing facilities prevents farmworkers from removing toxic pesticides from their skin, eyes and clothing. The lack of toilet facilities can lead to bladder diseases, gastrointestinal problems and urinary track infections. Poor field sanitation generally can result in cholera, hepatitis, typhoid, dysentery, hookworm and other parasitic diseases.

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What kind of health risks does the lack of standards pose for consumers? Professor Jesse Ortiz of the University of Massachusetts states that "bacteria and parasites can survive on fresh picked vegetables for days creating an obvious threat to the general public." Furthermore, according to Dr. Carolyn McLeod, a Florida physician, "...washing does not take away the parasites -- you have to chlorinate...we are probably underestimating the fecal contamination of our (food) supply."

These risks have been clearly outlined in OSHA reports. A memo to Robert A. Rowland, the agency's former director, written by OSHA field sanitation experts stated, "We must advise you, in our professional opinion, that the record will not support such a determination (not to issue a standard)" and failure to issue a standard would "bring discredit to the agency and ourselves." Given this background, it is hard to understand the logic behind the Department of Labor's failure to date to issue field sanitation standards. Why should standards for field sanitation be considered different from standards for other industrial workers?

Reasonable sanitation facilities for farmworkers could be provided at a minimal cost to employers. It is estimated that handwashing facilities, drinking water, and toilets could be offered for less than 75 cents per worker day. Although I appreciate the financial difficulties facing our nation's farmers, I do not feel that this places an unreasonable financial burden on farm owners. The bulk of the total estimated cost for these facilities would be for providing the toilet facilities. Companies that supply portable toilets have estimated the cost of providing and servicing field toilets at $70 to $75 per month for every 20 workers. Given the seasonal nature of the work, this expense would not be incurred every month of the year.

Handwashing facilities and drinking water could be provided at a very low cost since the proposed standards do not require any fancy cooling system or elaborate facilities.

Yet we still hear complaints about the cost. Participants at hearings held in Wisconsin on state standards argued that the toilets in the field were not necessary since the workers could use the toilets at the worker camps which are provided by the employers. This argument, however, ignores the two important facts. First, most work sites are at least one mile from the camp. Secondly, most farmworkers are paid on a piece rate basis, and time spent not picking represents time with no income.

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Surprisingly, more complaints were heard about the cost of providing potable water and handwashing facilities. Yet these facilities can be provided at a modest price. Usually, soap, water and towels are provided for handwashing use and drinking water is stored in a basic insulated container. A cost analysis prepared for OSHA by Centaur Associates shows that drinking water can be provided for approximately $1.76 to $14.37 per day for crew sizes of 11 to 100 people, respectively. Soap, towels and services for handwashing are in the range of $2.75 to $20.56 per day for the same size crews. This is not an unreasonable burden.

It also should be noted that decent working conditions have been shown to be beneficial not only to the health of the workers, but beneficial to their productivity and therefore, the economic health of the farm itself.

We in Congress must take action. The Department of Labor has demonstrated its unwillingness to face the gravity of the situation for the past 13 years, and unfortunately, I believe that waiting for them to take action now is unrealistic. We must not turn our backs on the facts. We must work for the passage of legislation which will ensure the dignity of our nation's farmworkers. It is a matter of simple justice.

Thank you.

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State of Wisconsin \ Department of Industry, Labor and Human Relations

Office of the Secretary
201 E. Washington Avenue
P.O. Box 7946
Madison, Wisconsin 53707
Telephone 608/266-7552

October 15, 1985

The Honorable Gerald Kleczka
House of Representatives
226 Cannon, House Office Building
Washington, D.C. 20515

Dear Congressman Kleczka:

On April 16, 1985, the Department of Labor (DOL) decided not to require field sanitation facilities for farmworkers. The decision by DOL, in our estimation, was a major setback for migrant farmworkers in states where no field sanitation facilities are required.

In Wisconsin, DILHR is charged with the administration and enforcement of safety, health and welfare of employes in the work place. To this end, we promulgate and implement standards regarding building safety and health, safety and welfare in the work place. In addition, our Wisconsin Migrant Labor Law establishes health, safety and sanitation standards for migrant labor camps. Most recently, our Department adopted field sanitation standards which will become effective January 1, 1986. Despite the fact that Wisconsin had adopted these standards for migrant workers, we are unable to promulgate like standards for all agricultural workers. This creates an inequity which only can be corrected by the adoption of federal standards.

It is our view that all farmworkers need these basic sanitary facilities. The need for toilets, clean drinking water and handwashing facilities is increased by the nature of the work involved — exposure to sun, physical labor and exposure to toxic substances such as pesticides. Clinical data and research studies have identified an increased incidence of chronic urinary infections, especially among women, due to the lack of toilet facilities and the increased incidence of heat stroke from lack of drinking water. There is also a high incidence of intestinal infection and hepatitis due to lack of handwashing facilities.

We believe that Bill H.R. 3295, which would establish nation-wide field sanitation standards for farmworkers, is essential and strongly support the passage of this bill. We appreciate your past efforts in support of safeguarding the health and welfare of farmworkers, and would urge your support for H.R. 3295.

Yours very truly,

Howard S. Bellman

Howard S. Bellman
Secretary

jak

cc: Senator Proxmire
Senator Kasten

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Mr. FRANK [reading]:

My own State of Wisconsin adopted field standards to be effective January 1, 1986. They apply only to migrant workers due to restrictions in the State statute. This State is unable to promulgate like standards for all agricultural workers.

I also include a letter from Howard S. Bellman, who is secretary of department of industry and human regulations and so for internal political reasons, apparently Wisconsin is unable to promulgate field sanitation standards for all workers. This is an inequity that can only be corrected by the adoption of Federal standards. The Federal Government is not responsible for the internal situation in Wisconsin.

The fact is that Colorado, one of the States cited as having such a rule, doesn't have it. Wisconsin, which says it's going to get a rule, is only going to get it for a few of the affected workers. So we have a really dismal record, it seems to me, in terms of checking what's going on now.

The State of North Carolina is 1 of the 13 that is currently doing this. We have here good persuasive testimony from the State of North Carolina saying that they are trying to meet those responsibilities and there's no reason to have the Federal Government not do this.

Other States listed—Texas and New Jersey—well, we have the chairman of the House Agriculture Committee, one of the great experts on agriculture in this House, come before us and say that Texas is not doing its job in the way that it ought to with this county enforcement.

We have the gentleman from New Jersey talk about the problems in New Jersey. So, of the 13 States listed, 1 doesn't have it. The health commissioner of one State or the labor commissioner says it's not enough. And two other States say, "no." Of the two States cited as examples, progress isn't going on there.

I think all of those are very relevant. Let me ask Mr. Fields, though, you say you agree that there should be standards. Is that correct?

Mr. FIELDS. That's correct.

Mr. FRANK. Particularly if you employ more than 10 you ought to provide for the sanitation standards.

Mr. FIELDS. That's right.

Mr. FRANK. I'm glad to have that on the record because I was rereading and I commend to people the debate on this subject in Congress. Many Members—Mr. Marlenee, Mr. Chandler—object in principle to the notion of standards.

We had people talk about portable outhouses on horseback and a lot of merrymaking at the very notion that these ought to be provided.

So, I appreciate this very important statement by the Farm Bureau that there ought to be such facilities because people who read the debate in the House will hear people saying that it can't be done.

I think one or two of my colleague this morning suggested that it was just too expensive. That's important and I think we ought to understand it.

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And the question is: If it ought to be done, why is it wrong for the Federal Government to do it?

Mr. Fields, well, you said of the States some of them are doing it better. Suppose the Federal Government promulgated a standard that did not preempt State standards where they were doing it better and were more flexibly but only covered those States which were not doing it at a minimum level; would you object to that?

Mr. FIELDS. Yes, on a political philosophy basis, if no other basis. As I said, we operate on the assumption at the Farm Bureau that there must be something in this country that the Federal Government doesn't have to do.

Mr. FRANK. It is too busy providing farmers with income, to deal with regulation.

Mr. FIELDS. We think they ought to spend more time on the $200 billion annual deficit.

Mr. FRANK. I appreciate that with you. Although, as President Reagan has pointed out, and I know the Farm Bureau agrees with me in some of that, in percentage terms, the largest single increase in the Federal budget under Ronald Reagan has been agricultural subsidies.

I agree with you on that. Although on many of the others, not.

Mr. FIELDS. At least we are consistent——

Mr. FRANK. I just think we ought to put the figure in there that President Reagan said in his radio address: in the 5 years preceding his administration, $15 billion went for agricultural—$17 billion went for agricultural subsidies.

In these current 5 years it is $59 billion.

Now he has tried to hold them down in some cases, not in others.

But I don't understand why—well, let me ask you about right-to-know laws. We had the States promulgating some right-to-know laws. And they were preempted by OSHA.

Are you in favor of that preemption by OSHA?

Mr. FIELDS. We sure are not.

Mr. FRANK. You are not. So you think the Labor Department made a mistake when they preempted States rights——

Mr. FIELDS. Absolutely.

Mr. FRANK. Well, I appreciate that. Because I am unable to distinguish, you are unable to distinguish philosophically, maybe Mr. Baroody can distinguish that for us.

I have no further questions. I just want to thank the State officials. They have made the case very well. And I just admire them for coming, because it shows that if States are trying to do their job doesn't mean that the Federal Government doesn't also have a role.

Mr. Boulter.

Mr. BOULTER. Thank you, Mr. Chairman.

Two of my colleagues are not here. And you made the statement that some of your colleagues here seemed to say that standards were too expensive.

Mr. FRANK. The gentleman from Iowa was the one. Mr. Lightfoot.

Mr. BOULTER. Because my only question here goes to the second stage. That is to say, who should do it and who can do a better job

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of it? I wouldn't argue for a moment that there should be no standards. And I wanted the chairman to know where I stand.

Mr. FRANK. I appreciate that. It was Mr. Lightfoot as well as, I said, Mr. Marlenee, Mr. Chandler and some others who had said that we shouldn't have any, or that they could be too expensive.

Mr. BOULTER. The only question I have, though, that gets to the testimony from New Mexico and North Carolina is, feeling the way you do, why aren't your States doing a better job?

Why do you have to wait on the Federal Government to tell you what to do?

In other words, you have received a list of minimum standards. That includes a list from the Secretary, a list of minimum enforcement standards. What is the problem with the States doing a better job? How can you argue that the Federal Government inherently has better resources to do this in view of our own $200 billion deficit problem? I'm not quite clear on that.

Either one of you, or both of you.

Mr. JEFFRESS. If I could respond for North Carolina, we are not suggesting that there be Federal enforcement of the standards in North Carolina. We have a State OSHA program in North Carolina. If OSHA regulations are adopted, there will be State employees enforcing those regulations.

As a matter of fact, in North Carolina this year we will inspect 250 migrant camps. That is more migrant camp inspections than is done in the whole Southeastern part of the country. And I suspect more than done by Federal OSHA throughout the country.

In fact, there is State enforcement going on. What we are saying is: one State enforcement, or 12 or 10 or 7 or 13 State enforcements isn't adequate. It is not sufficient. The migrant workers go from State to State. They need protection wherever they are. The fact that they have drinking water or handwashing facilities available in North Carolina for the few weeks they are in North Carolina does not speak to the issue of workers needing protection whenever and wherever they go.

Mr. BOULTER. Well, in Mr. Fields' statement he contends that actually more workers would be covered through the enhancement of State regulations and a few more States coming up with standards.

Would you disagree with that?

Mr. JEFFRESS. Yes, I do disagree with that. From the experience we have in North Carolina, while our OSHA program does cover farmers who have more than 10 employees, it also covers farmers who operate migrant labor camps even if they only have one or two people in that camp.

Our State sanitation laws, on the other hand, exclude nonmigrants from public health standards—there are no field sanitation standards in the first place. And for migrants, there are standards for housing for camps where there are 13 or more. So, in fact, our State sanitation law in North Carolina has a greater limit, if you will, than the limit imposed upon federal OSHA by Congress.

And with all due respect, it is not a whole lot easier to change a State legislative proscription such as we have in North Carolina, than it would be to change the rider in the Appropriations Act that you have here in Congress.

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Mr. BOULTER. So, what you are simply saying is that the States, including your own State and your own political subdivisions, just aren't doing the job that they, themselves, should do?

Mr. JEFFRESS. No. I am saying that in fact in State OSHA in North Carolina, we have made an attempt to do the job and we are doing a significant part of the job. But, North Carolina is trying to do something—we are doing it through OSHA, which is how we are recommending it be done nationally, not through State sanitation laws.

In some States that may be working well. Our experience in North Carolina is that State sanitation laws in fact are not the way to go. That it needs to be done through OSHA. And through OSHA we are trying to do something in North Carolina. But one State acting alone is not sufficient.

Mr. BOULTER. And why do you say State sanitation laws are not the way to go?

Mr. JEFFRESS. They have a similar kind of proscription as you have here in Congress upon OSHA. Except in North Carolina the proscription exempts even more camps, if you will, from regulation than what your proscription exempts here in Congress.

Mr. BOULTER. So what you would need to do is—is that by legislative law?

Mr. JEFFRESS. Yes, that is legislation.

Mr. BOULTER. So you just need to upgrade the law.

Mr. JEFFRESS. You in Congress could upgrade yours as well.

Mr. BOULTER. So it is a basic question, I guess, between you and me whether it is the Congress' obligation to prescribe for all the States or the several States' obligation to take care of their problems.

Mr. JEFFRESS. I think that is the nub of the issue: Should it be a uniform Federal standard? And we very much feel like it needs to be a standard that applies to all States, and that can only come at this point, since the U.S. Department of Labor has decided not to act, that can only come from Congress.

Mr. BOULTER. OK. Now if there were a massive safety problem, say with our food supply, if we were finding that our food supply was contaminated with diseases spread by field workers due to lack of sanitation conditions and things like that—pesticide poisoning, things like that—I think I would more readily agree with you. But, I haven't seen any evidence—and this is monitored by the Food and Drug Administration, that in this country that we have any large-scale problem in our food markets with food being contaminated in the field by workers.

Are there such statistics?

Mr. JEFFRESS. Again, I would cite Secretary Brock's own statement where he says that he is convinced that evidence compiled over the last several years clearly shows the existence of a serious health problem.

By Secretary Brock's own statement there is in fact a serious problem.

Mr. BOULTER. I'm talking about food supply. I don't know what problem that statement is alluding to. Is it alluding to drinking water? I mean, are hundreds of people dying out in the fields because they don't have any drinking water?

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I used to work in fields, and I had drinking water because I carried it in a jug. I mean, I think it is ridiculous to assume that people are getting sick from lack of drinking water.

Do you make that assumption?

Mr. JEFFRESS. I can tell you again from our experience in North Carolina, 14 percent of our inspections show that basic drinking water and handwashing facilities are not being provided.

Mr. BOULTER. Let's just talk about drinking water for a minute. Are you concerned about drinking water?

Mr. JEFFRESS. Absolutely.

Mr. BOULTER. Why?

Mr. JEFFRESS. Because there needs to be an adequate supply of drinking water, and it needs to be provided where folks don't have to drink from a common cup.

One of the studies that Secretary Brock has in his files shows that parasitic infection, especially among migrant farmworkers, is an epidemic. And, if they drink from a common cup in the fields, that parasitic infection is likely to spread and endanger more workers.

So, it is not just the water itself. In fact, the way the water is provided is important as well.

Mr. BOULTER. Is there something I am missing here? Can a person not bring his own cup?

Mr. JEFFRESS. Again, that is what we require in North Carolina, that there be separate cups. Single-service paper cups, or whatever.

Mr. BOULTER. Thank you.

Mr. HARTKE. On behalf of the State of New Mexico, I think that our principal point in regard to the question of federalism basically goes to the effects of the argument. That if, indeed, the effect of the argument to have a minimum Federal standard is that we will be able to get something done right now, quickly, to ensure that the farmworkers are assured of a certain amount of decency, a certain minimum floor of decency, allowing States to tailor programs that are better, since it is not a preemption program, we think that the effect of the argument that we are making today is that we would be able to make sure that farmworkers who, after all, are the principal group at risk, are being taken care of today by the governments as they wrangle back and forth.

The effect of the argument that States rights are concerned, seems to me to go to the issue of whether or not the State has an interest in making sure that the Federal Government doesn't insist that a farmworker has a toilet to go to or has water that is clean and drinkable within some reasonable area to be able to drink.

It is our judgment that our State doesn't have any interest in ensuring that these people don't have toilet facilities, or don't have areas to wash their hands, or don't have the kinds of things that 99 percent of the workplace has, this Congress has, my office over in the Hall of the States has, every office I worked for in the State of New Mexico had those kind of facilities.

It seems to me that the issue is that the State itself—the States rights issue, however much it might have some play in other areas, in this area the question is human rights. And the question prevails that what is going to make a difference for the farmworkers is whether or not they get the facilities. They don't really care

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whether it is the State or the Federal Government. They want the facilities.

And it seems to us that in view of the fact that disease knows no borders, that this is a very highly mobile area of society, that we want to ensure that this gets done in a way that we can ensure that everybody in society is assured of certain basic minimum rights.

And I would say this one last point. I think it goes to the central issue that you have been discussing. If it is right for 99 percent of the workplace to be covered by a national law in regard to OSHA, why should there be a special exemption for the most—for the least powerful group in our society, a group that calls out for justice not on the basis of the votes it can deliver to the Congress or to others in public office, but on the basis of simple decency?

Had the employers done this over the last 13 years, we wouldn't be here talking about whether or not they ought to have a toilet to go behind, and to go to the bathroom. We wouldn't be talking about where they can go out and drink water that is safe and clean, and we wouldn't be talking about where they can wash their hands after they have been handling dangerous pesticides.

So, it seems to me that the issue is on the employers who have, in the first place, failed to be able to do the job. Otherwise the lawmakers wouldn't be involved either on a State or Federal level.

The second issue is, if it is good enough for OSHA to say everybody else ought to be included, then I think the burden falls upon the special interests to explain why they should be exempted.

And that is the reason that we are here for our testimony today. Thank you.

Mr. BOULTER. Of course, I think that throughout this debate, that it has application not just to this special group. I mean, in the past several years we are seeing the debate spread to everything. And a general sort of deregulation or moving away from so many regulations.

But, I appreciate what you are saying. And your State and your Governor is well known for concern about human rights and I appreciate that.

What is your Governor, your legislature, you doing to require—let's don't talk about enforcement, maybe that is a separate issue—but what are you doing legislatively to require toilets and other field sanitation rules?

Mr. HARTKE. First of all, let me make clear that our State has now begun to do rulemaking to try to get the kinds of State standards that we are not going to see on a Federal level.

Our efforts have been to try to ensure that the Federal Government take over this responsibility. As you know, the States are very interested. And I think I can speak from having watched these national Governors' meetings. I don't know of a State that is not interested in the sorting out process as to what should be a Federal responsibility and what should be a State responsibility. But I doubt—and maybe I am wrong and you can correct me if I

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am—but I don't know of any area here where we are recommending that we move away from the other 99 percent to have OSHA not cover other industries.

If that is true, then why can't we cover the farmworkers with a Federal standard?

It seems to me, if it is good for 99 percent, it is good for the other 1 percent. I don't understand why we ought to be making that distinction. And if we are making that distinction, then it ought to be on those who ask for the special-interest exemption to explain, to carry the burden.

And so, while we are trying to do something in our State, I want to make it very clear that whatever we do in our State, we still believe there should be a minimum Federal standard of decency for the farmworkers, because we want something done.

Mr. BOULTER. But the only thing I understand that you are really trying to do in your State, is to get us to do the job.

Mr. HARTKE. We think that is the area of responsibility that it rests at primarily.

Mr. BOULTER. Otherwise, your State is not doing anything to require these sanitation facilities.

Mr. HARTKE. No, we are trying to adopt rulemaking at this point. But, I might say that the decision by Secretary Brock puts the States in a very peculiar position. Again, in the argument in regard to federalism, we are being asked to try to do something in our State. And if we don't do—if the other States don't do something in their States, then the Federal Government is going to do what we believe it should have done all along, which is to issue a Federal minimum standard.

Mr. FRANK. Let me, just on the point of drinking water—and I appreciate what people have said. This is a synopsis of findings prepared by Jesse Ortiz, doctor of public health, associate professor of environmental health. He was asked, I believe by OSHA, to summarize some of the medical testimony that was presented at their hearings.

A brief synopsis of findings. He talks about how much more at risk the migrant worker is of getting an indicated infection than the general population. Intestinal diseases, the migrant worker has a relative risk 11.3 to 59 times as high as the general population. Gastrointestinal diseases, 11 times as high. Viral hepatitis, 33 to 533 times as much. And then there are occupational diseases, 4.11 and urinary tract infections, 3.5 times as much. Those would be the relevant ones.

He then says: the evidence also shows that there could be a substantial decrease in these infections and illnesses if sanitary and handwashing facilities are provided, as well as cool, 55° to 60°F, drinking water.

So, here is one piece of medical evidence about the relevance of drinking water.

Next, from another well-known "leftist" organization, the American Medical Association [laughter] is writing "to express its support for your bill that would establish Federal field sanitation

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standards." And specifically there is reference here to drinking water, on page 2. The availability and consumption of an adequate quantity of clean drinking water at the workplace would help prevent dehydration and heat-related illnesses of individual workers, particularly in hot climates.

And I will ask that this go in the record.

[The document referred to follows:]

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AMERICAN MEDICAL ASSOCIATION
535 NORTH DEARBORN STREET • CHICAGO, ILLINOIS 60610 • PHONE (312) 645-5000 • TWX 910-221-0300

JAMES H. SAMMONS, M.D.
Executive Vice President
645-4500

October 29, 1985

RECEIVED
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The Honorable Barney Frank
United States House of Representatives
Washington, D.C. 20515

Re: H.R. 3295, a bill to establish a federal field sanitation standard

Dear Representative Frank:

The American Medical Association is writing to express its support for your bill, H.R. 3295, that would establish a federal field sanitation standard.

H.R. 3295 would require that agricultural employers provide potable drinking water and properly maintained toilet and handwashing facilities for their employees engaged in hand-labor field operations. Toilet and handwashing facilities would not be required for employees who perform field work for no more than three hours during the day.

The AMA is aware that progress has been by the states in ensuring that agricultural workers are provided with adequate sanitation facilities. We recognize that in view of this progress, many well-meaning individuals and organizations are of this view that a federal field sanitation standard is not needed. While the AMA is concerned about unnecessary federal regulation, we believe that the establishment of a federal field sanitation standard is needed to ensure that the health of agricultural workers in safeguarded in all states.

Well-maintained toilet facilities are needed to ensure that human wastes are disposed of properly. Untreated or inadequately treated human fecal wastes can contaminate drinking water supplies and food products with disease-producing bacteria, amebae and viruses thereby causing typhoid fever, the salmonelloses, cholera, bacillary dysentery, amebic dysentery and infectious hepatitis.

Adequate handwashing facilities are necessary to prevent the transmission of enteric diseases by the fecal-oral route. Handwashing facilities are also effective in removing and preventing the absorption of pesticide residues to which an agricultural worker may be exposed.

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The availability and consumption of an adequate quantity of clean drinking water at the workplace would help prevent dehydration and heat-related illnesses of individual workers, particularly in hot climates.

The AMA believes that any exception to the provision of drinking water and necessary sanitation facilities should be granted only when it can be demonstrated that provision of such facilities is not feasible and that the lack of such facilities will not contribute to an increased health risk for agricultural workers.

At its annual meeting in June, 1985, the AMA House of Delegates reiterated the Association's policy on this issue as follows:

> "RESOLVED, That the American Medical Association reaffirm its support for the provision of potable water and sanitary facilities for agricultural workers, and actively pursue the issue of federal regulations until adequate regulations are adopted and enforced by the Occupational Safety and Health Administration."

We look forward to working with you on this important health issue.

Sincerely,

James H. Sammons, M.D.

JHS/cmb
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Mr. FRANK. Finally, just to anticipate, Dr. Louise Weidner will be speaking from the University of Utah. It says the second most important—this is based on U.N. special health session. They declared 1981-90 the "U.N. Drinking Water Supply and Sanitation Decade."

There is also in her statement an emphasis on the importance of drinking water from the standpoint of health. Sanitary facilities are first, and drinking water second in this regard.

So, we have three pieces of, I think, persuasive medical argument about the role of drinking water.

Mr. Owens?

Mr. OWENS. I have no questions.

Mr. FRANK. I want to thank the panel again.

I have just one other question of Mr. Fields. You said that leaving it the way Secretary Brock wants to require it will allow more people to be covered.

If, on the other hand, we were to exercise our undoubted constitutional power to promulgate a minimum Federal standard that did not preempt more comprehensive State standards, would that not solve the problem of coverage in that sense?

Mr. FIELDS. I think it would alleviate that. But I suspect that several States would still go beyond the Federal requirement, just knowing the States as we do.

Mr. FRANK. We would not preempt that. We could allow that to stay in effect. So there wouldn't be any problem.

In other words, I think—let me be honest. I think the argument that by having a Federal standard we would protect less workers than the State standard is the reddest herring west of the Caspian Sea. [Laughter.]

Because, all we have got to do is simply say that there will be no preemption of any standard that is more comprehensive. We have done this in other areas. We have undoubted constitutional power to do it.

So, there is simply no way in the world, as you are aware——

Mr. FIELDS. Does your bill say that?

Mr. FRANK. Not yet. It is going to, because there was uncertainty about the preemption issue. And on relooking at it and hearing that issue—and that is why we have things early on—we decided to make that explicit. And, within a day or two that bill will be reintroduced to deal with the preemption.

We weren't sure whether OSHA could do it itself, and we did some legal research. And I agree with you that the bill ought to say that.

But you would agree that once the bill says that, that there can't be any problem of there being less coverage. Is that correct? Would you agree with that?

Mr. FIELDS. Probably less coverage. I don't know. I think you still could have more coverage but——

Mr. FRANK. Mr. Fields, let me ask you a question.

If we put a standard forward, OSHA and Congress working together, that does not preempt broader and more comprehensive State action, how could that possibly result in fewer people being covered than if we don't act?

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Mr. FIELDS. It won't preempt it, but whether there will be that much encouragement then for the States to go beyond, I don't know.

Mr. FRANK. Well if they weren't going to be preempted, why would they not be encouraged to do it?

You mean, the States would be encouraged to go ahead if there were no Federal standards. But if there were Federal standards that didn't preempt the broader one, they wouldn't be encouraged?

Mr. FIELDS. Well, I don't know. The States have been previously acting on their own up to now.

Now if we come along with a uniform Federal standard, probably more of them will take the easy way out and adopt the Federal standard.

Mr. FRANK. Well, I have got to say that I don't think that answer is intellectually as honest as you usually are, Mr. Fields. I don't think that is really the argument here. And I think it is very clear that we can deal with the preemption issue, and it is very clear that States that want to go beyond, can go beyond.

They can do the less than 10. Some States do that.

I really think that is not the major thrust. I simply don't believe that your position or that of others is that you are worried the poor farmworkers will have less protection if the Federal Government comes in.

I think you have, as you said, the general philosophical position that in the regulatory area you don't want the Federal Government involved. It is OK in the subsidy area, although not as much as they are doing.

The farmers want subsidies from the Federal Government, but not regulation. That is an understandable position, but it is not one I agree to.

Mr. BOULTER. Mr. Chairman, would you yield to me for a second?

Mr. FRANK. Sure.

Mr. BOULTER. I think that the answer to your question has been provided by the gentleman from New Mexico when he admits that his State has done, and is doing essentially nothing out of their great concern for human rights, other than to get the Federal Government to act.

Mr. FRANK. That's right. Because we now have a situation, you see, where they are discouraged from acting. No, I think you have got it quite the opposite.

What Secretary Brock has said is, right now if enough States act he will use that as an excuse not to cover the other States. So, a State that is worried about the national problem—people who happen to be Americans who think we ought to have these things protecting everybody, they are reluctant to do it. It is like some States being worried about promulgating seatbelt laws because they are afraid that that will do away with airbags.

If people knew that there was going to be a national standard and they could then go beyond that, I think that would be the optimum for encouragement. Right now States like New Mexico are being told by Secretary Brock, if you do what you think is the right thing, that might be a reason why some other State will be allowed to have no protection at all.

I thank the panel very much. We will call on Mr. Baroody.

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STATEMENT OF MICHAEL BARODY, ASSISTANT SECRETARY OF LABOR FOR POLICY, DEPARTMENT OF LABOR, ACCOMPANIED BY PATRICK R. TYSON, ACTING ASSISTANT SECRETARY OF LABOR FOR OSHA

Mr. BARODY. Thank you, Mr. Chairman.

Mr. FRANK. Mr. Barody, thank you. I apologize for being a little later than expected, but we didn't expect those three rollcall votes.

I thank you for coming. Our witness is Mr. Michael Baroody, Assistant Secretary of Labor for Policy. And you may proceed.

Mr. BARODY. I thank you and this committee for the opportunity to discuss the actions taken by the Department of Labor regarding an occupational health standard on field sanitation.

At the very outset, I would like to state emphatically that Secretary Brock is determined to ensure that field workers in this country will be provided with the toilets, handwashing facilities, and drinking water they need in their work environment.

The Department of Labor was first faced with this issue in 1972 when OSHA was petitioned to promulgate a standard requiring sanitary facilities for agricultural field workers. Over the next 13 years there was a protracted process marked by seemingly endless litigation. And then on April 16 of this year, shortly before Secretary Brock assumed his office, OSHA issued the decision not to issue a standard.

However, upon taking office, Secretary Brock made a commitment to review that decision. He initiated review of the record OSHA had compiled since 1972, and was faced with an extensive body of evidence documenting health risks faced by agricultural field workers.

From this review, Secretary Brock concluded that these workers need the protections afforded by adequate toilet facilities, handwashing facilities, and potable drinking water. Providing these basic necessities should significantly reduce the unacceptable risks of parasitic and infectious disease, and chemical contamination. They will also help reduce cases of urinary tract infection prevalent in females who have no toilets available. Secretary Brock was also alarmed by the incidence of heat-related conditions that can largely and simply be avoided by the provision of adequate drinking water.

The Secretary's review of the issue persuaded him that additional regulatory measures were necessary, and he has taken action to ensure that the maximum number of field workers be protected in the most effective manner.

By and large, the criticism of the Secretary's decision has been focused on the issue of implementation. It was the Secretary's judgment that the States, which it must be recognized have already begun to act to provide significant protection to 75 percent of the affected population, are best equipped to deal with the public health nature of the occupational risks posed in the field.

Equally important, the States, unlike OSHA, are generally not constrained by an appropriations rider from protecting almost two-thirds of the workers, those on farms with 10 or fewer employees.

The Secretary recognizes that the States may ultimately fall short of affording the necessary protections. Should that occur,

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OSHA must, and will be, prepared to step in. If the States don't meet the challenge, the Secretary has made a firm commitment to issue a Federal standard by a date certain.

Before discussing some of the critical issues involved in this decision, I would like to review the situation facing the Secretary when he began his evaluation of this matter, and to review the particulars of the carefully balanced decision arrived at by Secretary Brock.

In their 1972 petition to OSHA, the Migrant Legal Action Program requested a standard requiring potable drinking water, handwashing facilities, and toilet facilities for farmworkers. In 1973, the Migrant Legal Action Program filed suit in the U.S. District Court for the District of Columbia, seeking to compel OSHA to issue a standard.

On April 27, 1976, OSHA issued a proposal for a field sanitation standard which would have required potable drinking water, handwashing facilities, and toilet facilities. But, in light of other priorities, OSHA discontinued the work on the proposal shortly after it was published.

The litigation with the Migrant Legal Action Program continued, and under the terms of a court approved settlement with them in July of 1982, OSHA agreed to proceed with rulemaking, and either to complete a field sanitation standard, or to publish in the Federal Register a determination that no such standard was needed.

On March 1, 1984, OSHA published a Notice of Proposed Rulemaking, and a request for comments. That proposal would have required employers of 11 or more field workers to provide such facilities to farmworkers in the field.

As you know, on April 16, 1985, OSHA announced that a Federal field sanitation standard would not be issued. However, as I noted earlier, upon assuming office, Secretary Brock ordered a thorough review of the evidence compiled during the rulemaking and the April 16 determination. He concluded that the decision not to issue a Federal standard did not adequately take into account the potential health risks to farmworkers. On September 11, the Secretary announced his decision to urge the States to act immediately, and at the end of 2 years, to issue a Federal standard if the States have not provided adequate protection.

As explained in his Federal Register notice of October 21, the Secretary said the Department will use three criteria to determine whether State laws or regulations are sufficient to preclude issuance of a Federal standard:

First, the States' field sanitation standards must provide protection to that proposed in the Federal Notice of Proposed Rulemaking in March of 1984.

Second, the States must be able to demonstrate that they have adequate enforcement programs in place.

And finally, enough new States in addition to the 13 which already have standards, must issue field sanitation regulations to ensure that the vast majority of agricultural field workers not protected at present by State standards, will be protected. This means that the States which have significant farmworker populations, and which now are without standards, must promulgate field sanitation standards in order to remove the need for Federal action.

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While variations to fit local climatic, topographical, crop and labor conditions are expected in the State standards and enforcement programs, those standards and programs, viewed as a whole, must provide protection at least equivalent to the 1984 OSHA proposal. It is clear that an adequate State standard must include the requirement that the employer supply adequate drinking water and appropriate handwashing and toilet facilities for farmworkers in the field. Similarly, while State enforcement programs may vary accordingly—according to differences in types of resources, agricultural conditions and local experience with current enforcement programs—an adequate enforcement program must include certain essential elements. For example, States must provide adequate legal authority, personnel and resources to a responsible State agency to conduct appropriate inspections and to compel abatement of hazards.

Variations will be acceptable in certain details of the State programs, such as the manner in which a standard specifies that the required sanitary facilities be provided. For example, while the Federal proposal would require employers to provide one toilet for every 20 affected employees, under the guidelines announced by the Secretary, a State might raise or lower that ratio, but would have to assure that the protection afforded was equivalent to the 1984 proposal.

In short, if a State were to permit one toilet for every 40 farmworkers, for example, it might have to compensate for an increased rate of use of the facility by increasing to twice a week the frequency of required servicing. On the other hand, because OSHA's rulemaking record shows that alternatives to the use of water and soap are inadequate for the purposes of removing chemical contaminants, the State standard would not be considered acceptable if it allowed the substitution of moist towelettes for handwashing facilities.

In sum, the State field sanitation programs are to be in compliance with the October 21 guidelines, and they will provide protection to farmworkers that is at least equivalent to that which would be provided by a Federal standard.

Since the issuance of the Federal Register notice on October 21, Secretary Brock has written to the 50 State Governors. He has urged them to give field sanitation a high priority and offered Federal technical assistance to enable them to meet the requirements for protecting farm field workers. The Secretary has told the Governors that the evidence compiled over the last several years by OSHA has convinced him of the existence of serious health problems which have not been fully addressed. He indicated he believes that State action rather than Federal action is the most desirable alternative for a number of reasons. These include the encouraging strides already made in this area by several key States, the differing circumstances associated with the problem in different States, and the legislative and practical limitations on OSHA's ability to address as completely as possible, those agricultural problems.

The Secretary included a copy of the Federal Register notice containing these guidelines for developing and enforcing State standards, and asked the Governors to designate a key official as a liaison with the Department on this issue.

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OSHA's regional administrators will soon meet with each designated State official to explain the Secretary's position on field sanitation, to obtain information about the approach to be taken by the State, and to offer technical assistance. Each State will be asked to provide OSHA's regional administrator with a copy of its standard, and a written description of its programs.

OSHA's national office will coordinate review of all State submissions.

By the end of the 18-month period allowed for State action, OSHA will have evaluated the States' actions in light of the three criteria I have mentioned. If the Department determines that the States have acted adequately to protect farmworkers, no further Federal action will be required. If, on the other hand, the States' responses prove to be inadequate, then within 6 months after that determination, the Department will issue its own field sanitation standard.

Secretary Brock strongly believes that the States will respond to this call for immediate action. Thirteen States have already provided significant protections to 75 percent of the exposed population. Eleven have standards apparently covering all crops. Almost all of these States appear to have adequate drinking water requirements. Except for the two States without toilet requirements, the current standards are as protective or close to as protective as the 1984 OSHA proposal, assuming adequate maintenance provisions.

The substitution of moist towelettes for handwashing water, appears to be the principal impediment to the States meeting the handwashing criterion. Thus, for the most part, the ability of the States to remedy inadequacies in their programs does appear to be within their grasp. For some States, this may mean simply including a requirement in their standard for a handwashing facility, or lowering the ratio of workers to facilities, or expanding coverage to workers engaged in harvesting crops not currently covered.

We intend to work closely with the States to evaluate their standards, and to provide guidance and assistance.

In addition, at least two other States, Minnesota and Wisconsin, are developing new standards. This shows that the States are showing initiative and concern for their workers. The States, in short, are moving responsibly. Now that the Department has clearly issued the call for State action and has clearly stated the alternative, the Secretary is confident that the States will complete the task before them.

It is clear that the States are equipped to deal with this type of issue effectively.

Sanitation, like many other public health issues, has traditionally been a primary concern of State and local public health officials. It is they who have developed the expertise, organizational networks, and resources to address these issues, and who are, therefore, best able to protect against the health risks in question. Moreover, regulation of sanitation for agricultural field workers involves tens of thousands of farms across the country with wide differences among them in climate, terrain, size of operations and labor intensity. Because of the variety and uniqueness of these workplaces, farmworkers are more likely to be afforded effective protection if adequate standards are developed by the States, since the States

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are best able to adapt their regulations to the particular conditions of agriculture within their borders.

On the other hand, OSHA has, of necessity, carefully developed priorities for the targeting of its enforcement resources and must focus on those workplaces that are the most hazardous. While the Department is fully prepared to issue a Federal standard at the end of 2 years, it is only realistic to conclude that on an issue such as this, the States are at least as well equipped as OSHA to do an effective job.

It is also important to reemphasize one of the critical factors in Secretary Brock's decision that made arriving at a conclusion particularly difficult and that is unique to this OSHA matter. OSHA is prohibited by congressional appropriations rider from promulgating or enforcing standards with respect to farms with 10 or fewer employees. This prohibition puts two-thirds of the affected population out of OSHA's reach. However, the States are in general not so restricted. Of the States with current standards, only three have adopted OSHA's coverage restriction; five States have no practical limitation on the number of workers as a prerequisite to coverage. The remaining States require between five and eight workers.

Thus, it is clear that most of the States that have acted have been willing to provide more complete coverage than OSHA is capable of providing.

Let me assure the subcommittee that the Department will be very active over the next 18 months and will do all it can to encourage State action and provide the necessary assistance. In addition, we will continue our review of the two pivotal reports just entered into the rulemaking record, taking into account the public comments we receive on these reports. This will be a necessary part of our preparations to issue a standard if that becomes necessary.

In conclusion, I want to reiterate three essential points. The first is this, that Secretary Brock has ended, not prolonged, the 13-year debate over field sanitation, because he has made an unequivocal commitment to providing additional needed protections to America's agricultural field workers.

Second, the actions he has taken are designed to assure the most effective protection for these workers.

And third, based on the record of State action to date, in light of the prior uncertainty over Federal action, there is reason to believe that the States will act responsibly, fully and quickly, to provide the necessary additional protection. And, if they do not, Secretary Brock will.

Mr. Chairman, this concludes my prepared remarks. I will be happy to answer any question you may have, and would note for the record that I am accompanied by the Deputy Assistant Secretary for OSHA, and Acting Assistant Secretary, Mr. Pat Tyson.

Mr. FRANK. Mr. Tyson, do you agree that the States are going to move?

Mr. TYSON. Yes, I do.

Mr. FRANK. That is not what you said to a TV reporter a little while ago. We have a transcript of the October 23 "Eyewitness News" show, which is WDVM-TV. And you were asked, according to this transcript, by Mr. Wilson, Steve Wilson the reporter:

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In fact the field sanitation team here at the Labor Department wrote new rules to require basic sanitation. But an Assistant Labor Secretary decided not to implement them despite this internal memo from most of the members of the team which said inaction can only bring discredit to the agency and ourselves.

Now, the feds say the States ought to do it. Are they likely to do it?

Mr. TYSON. Frankly, my guess is, based upon previous history, is that they may not.

Were you misquoted in this?

Mr. TYSON. No.

Mr. FRANK. Did you have new information in the last couple of weeks?

Mr. TYSON. Actually, there is some new information with respect to two States that I was not aware of that had taken action. I think, given a meeting that I had subsequent to that interview with that reporter, with a number of States where they indicated some interest in——

Mr. FRANK. Well, on October 23, you didn't think they were going to act.

Mr. TYSON. No, no, read the statement again.

Mr. FRANK. "Frankly, my guess is, based upon previous history, is that they may not."

Oh, you meant also that they may?

Mr. TYSON. That they may not. Also may. I don't know. I can't—if you looked at the language there, that is clearly not——

Mr. FRANK. Did he distort what you said? Did he cut out the rest of it?

I would think if I was yourself in that position and I would have said, now you say the States are going to do it, are they going to do it. And you said they may not, I mean were you stating that they had permission not to?

Mr. TYSON. I'm saying they may or they may not.

Mr. FRANK. You didn't say they may or may not. You said they may not. I mean, you left a clear impression that you didn't expect them to.

Mr. TYSON. Well, it is not the impression I intended to give.

Mr. FRANK. No. I think that was the impression you intended to give and you were subsequently overruled. I have to be honest about this.

Mr. TYSON. I would be in a better position of knowing that.

Mr. FRANK. No. You have testified before, Mr. Tyson, and you are usually fairly articulate. You don't usually say one thing when you mean the opposite.

But now let me say, you got the new information. You said two States. One of them is Wisconsin?

Mr. TYSON. Wisconsin and Minnesota.

Mr. FRANK. OK. Wisconsin, October 15 to Congressman Kleczka from Howard Bellman, Secretary, State of Wisconsin, Department of Industry, Labor and Human Relations.

Despite the fact—"* * * our Wisconsin Migrant Labor Law establishes health, safety and sanitation standards for migrant labor camps. Most recently our department adopted field sanitation standards which will become effective January 1, 1986. Despite the fact that Wisconsin had adopted these standards for migrant workers, we are unable to promulgate like standards for all agricultural

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workers. This creates an inequity which can only be corrected by the adoption of Federal standards."

This, to you, is the kind of progress we can count on?

Mr. TYSON. That is a piece of the whole puzzle.

Mr. FRANK. You gave me two States. Do you think this is progress?

Mr. TYSON. I have given you two States with just one example. That is one part of the whole picture.

Mr. FRANK. Let's talk about this part. You can talk about other parts——

Mr. TYSON. But my statement was based on the whole picture, not just that part.

Mr. FRANK. I understand that. But, you cited two States, Mr. Baroody cited two states. We have heard about these two States. Wisconsin was one of them. I asked you which States? You said Wisconsin and Minnesota.

Now I am asking you about half of the specifics you gave me. I will give you a chance to talk about others. I want to know if you regard this as the kind of progress that is helpful, because I don't. When they tell us that they are not going to be able to handle non-migrants, they are not going to be able to cover other agricultural workers, that is not encouraging to me.

Is it encouraging to you?

Mr. TYSON. What is the date of that letter?

Mr. FRANK. Is that the kind of—I mean if other States did this, would that trigger off the Federal standard?

Mr. TYSON. May I ask what the date of that letter is?

Mr. FRANK. October 15, 1985.

Mr. TYSON. For one, I have not seen that letter. But I would not view it as negatively as you do. There is some movement in that direction that precedes the letter—that the Secretary wrote to all State Governors requesting urgent action on this issue, and offering——

Mr. FRANK. Let me ask you the question again.

The question is: Given this statement of their position, is this the kind of progress which you will take into account that will say that you don't need to do the thing.

Mr. Baroody, I ought to ask you. Wisconsin has been cited. Is this the kind of action that will satisfy you if enough States do what Wisconsin did?

Mr. TYSON. Clearly that is not enough. We have set forward the guidelines that a State has to reach.

Mr. FRANK. I appreciate that. You have cited Wisconsin as one of the States—you have cited two States which are moving. One of the States it now turns out isn't moving.

Mr. TYSON. No, they are not moving enough. And we have made it clear now what they have to do in order to move enough.

Mr. FRANK. I understand that. And I think you were not then entitled to cite Wisconsin as one of those States that is moving in your direction. They say they are not going to be able to do it.

Mr. Baroody, would you differentiate for me this from the right to know situation.

But let me ask a question before I get to that. I don't want to—I was remiss. I mean this seriously. I appreciate what Secretary

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Brock has done. He clearly has made some advances here. There are people in the House in the debate who said we didn't need this at all. Secretary Brock disagrees. He thinks drinking water, clean drinking water does have health benefits.

So I agree with the substance of what he said, and I am glad to see that he thinks people need these rights. I just question his saying that some of them ought to wait 2 years before they get them.

If we were to resolve the preemption problem which we easily can do, and if we would allow—well, let me go back a step.

You said several places what I thought was kind of unfortunate—maybe I misheard you—that the rider which limits OSHA from dealing with agricultural employers of 10 or less—are you opposed to that rider? I should ask both of you that.

Mr. BARODY. The department has traditionally testified against it. But, it does have the effect in this case of restricting coverage of the national standard pretty substantially.

Mr. FRANK. Suppose we put forward a standard which explicitly did not preempt—and if you needed any statutory language we could do that—did not preempt any State from acting either more broadly or for less than 10. What would the problem then be?

Mr. BARODY. The problem would still be the rider. If we were able to obtain the funds that would permit enforcement on that basis, it would be a different situation than currently obtains or has in the last 9 years.

Mr. FRANK. I may have misstated myself.

That is, we would allow the states to continue doing what they are doing with less than 10. In other words, if we made it clear that a promulgation by OSHA of something covering 10 or more did not preempt the rights of the States—or 11 or more—didn't preempt the right of the States to do 10 or less, that would resolve that part of the problem, wouldn't it?

I mean, we could clearly do that. Couldn't we clearly put forward something that didn't preempt the states?

Mr. TYSON. I think we need to separate two points here. The restriction that we see is not the preemption issue as much as the appropriation——

Mr. FRANK. I understand that, Mr. Tyson. That is why I am talking about preemption. I am saying that OSHA could promulgate a statement that covered employers of 11 or more and put in there something that says this does not preempt the States from dealing with 10 or less if they want to.

Now that is a fairly simple concept.

Mr. BARODY. What the Secretary is seeking here is precisely to utilize the fact that the States would not be bound by that. If we had a different national standard from a State standard, it may raise some questions administratively. I am not sure they are major.

Mr. FRANK. How could it raise any administrative questions if you simply said, if you don't cover anything—you are anticipating that. You are saying that 2 years from now you might have to promulgate a standard.

Is it your intention when you do that to preempt the States from doing less than 10, or to——

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Mr. NIELSON. Would the chairman yield?

Mr. FRANK. I would like to get the answer.

Mr. TYSON. I would like to clarify——

Mr. FRANK. I will yield to the gentleman from Utah.

Mr. NIELSON. I'm wondering, are you saying that the Federal Government will take care of all of the farms with 11 or more workers, and that States would cover those with 11 or less if they chose to?

Mr. FRANK. Yes; that is what the preemption——

Mr. NIELSON. That is your concern both Federal and State involved? Is that your concern?

Mr. TYSON. No, that is not our concern. That issue—the issue of whether or not 10 or fewer are preempted by the Federal act—is relatively clear in our view. The courts ultimately have to decide these types of issues because they have to interpret the language of the act.

But the Department's position is they are not preempted now by that provision of the act. It is the appropriations rider that causes the problem.

Mr. FRANK. I understand that, Mr. Tyson. I don't know why you think that it is necessary to say that. We appreciate that there is an appropriations rider. I don't like it, you don't like it. It is there.

People have said that one reason not to have the Federal thing is, well, the States can do more because they can do the less than 10. My point is that we could easily resolve that. I think that is a fake issue, because we could easily resolve that by saying this Federal regulation only applies to employers of 10 or more—which is all it can apply under the—11 or more. And we explicitly do not prevent the States from dealing with 10 and less.

Now why doesn't that solve your problem?

Mr. TYSON. It doesn't solve the problem because that position is already in existence. The Department——

Mr. FRANK. Then there is nothing about the Federal—well then I don't understand why you keep saying it is better to let the States do it than the Feds, because the States can do employees of 10 or less.

You are telling me the States can already do 10 or less, and the Feds could then cover 11 or more.

So, why is that a problem?

Mr. TYSON. Because we can't cover 10 or less because of the appropriations rider.

Mr. FRANK. Mr. Tyson, I understand that. I stipulate that with you.

Mr. Baroody has suggested that one reason not to have Federal Government act is that the Federal Government can't cover less than 11.

My point to you is that that need not be a problem because you could promulgate that and promulgate it in a way that made it clear that the State's right to do less than 11 is protected. So, why is that an argument against the Federal Government acting?

Let me try one more time. I really can't believe this, frankly, degree of lack of understanding of a fundamental intellectual concept.

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You tell me that it is bad if the Federal Government does it, because we can't cover the employers of 10 or less.

My answer to you is: Wrong, in my view, because the Federal Government could promulgate something that covered 11 and more and the State could retain its right to cover 10 or less.

Mr. TYSON. What you are saying then would create a situation where those States that currently have field sanitation provisions which apply to numbers of employees below 10 would only be able to enforce those standards between 6 and 10, 5 and 10, whatever the situation might be in that State according to their law.

Am I now understanding——

Mr. FRANK. No; because, if they had a broad enough standard, you could also say that that wasn't preempted and they could continue to apply the whole thing. Do you understand that?

Mr. TYSON. Even though they covered more than 10?

Mr. FRANK. Sure; you could do that. You could say that this doesn't preempt a broader standard.

Mr. TYSON. I do not think legally we could do that. Congress would have to change the statute to do that legally.

The legal issue——

Mr. FRANK. Yes; I understand. I am talking about us working together in this and saying—working statutorily.

Mr. TYSON. Your bill provides for that.

Mr. FRANK. Yes.

Mr. TYSON. Your bill would eliminate the preemption.

Mr. FRANK. Right.

Well, let me put it to you this way. Two years from now you are going to do that though, aren't you? Let me ask you, 2 years from now if the States don't act, if there turn out to be more Wisconsins than you realize and the States don't act—and more Colorados, because you have got Colorado in there when it doesn't belong there—I assume you agree that Colorado doesn't belong in the 13?

Let me read you the letter to me from the Colorado Department of Health people. They had, until 1978 when Colorado's Occupational Health Program was terminated, there was a rule.

"It is our understanding that this old rule"—terminated in 1978—"has been mistaken for current statutory authority. Currently Colorado has no enforceable field sanitation standards."

Mr. TYSON. My understanding of the situation is somewhat different than that.

Mr. FRANK. Different from the Colorado——

Mr. TYSON. Programs terminated in 1978 when the Colorado legislature declined to fund the State OSHA Program. My understanding is that the laws and the standards are still on the books for that State and are still enforceable.

The only issue is one of funding.

Mr. FRANK. So you count Colorado as one, even though the Colorado Board of Health, the Department of Health, the director of the Migrant Health Program and the director of the Family Health Service Division tell you they don't have that authority, you say they do. That doesn't give me a lot of confidence.

Mr. TYSON. The authority that they are speaking of is the authority to operate an approved OSHA State plan. It is not neces-

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sary to have an OSHA approved State plan in order to enforce in this area.

Mr. FRANK. They say no statutory authority currently exists in Colorado that calls for farmworkers to be provided toilets, hand washing capability and drinking water.

Mr. TYSON. Regulation.

Mr. FRANK. And they say that they don't have enforceable field standards or the means in place to enforce them.

So, you are saying that the State of Colorado, which is one of your 13, has a regulation but doesn't know it. Is that right? The board of health doesn't know——

Mr. TYSON. They have a regulation. I think they know they have a regulation.

Mr. FRANK. Well, they say they have no enforceable——

Mr. TYSON. They do not have the mechanism funded by——

Mr. FRANK. Let me read you this. "Colorado has no enforceable field sanitation standards, nor the means in place to enforce them if they did exist."

So, they are making two separate points. No enforceable field sanitation standards, nor the means in place to enforce them if they did exist.

So then the point is, either the State of Colorado is lying to me in this letter, or they have a standard they don't know they have. In either case, I think counting them as one of the States that is going to do the job makes me very nervous. I don't think either is the case, but your position would have to be they are either lying to me or they don't know they have it.

Mr. TYSON. Clearly, one of the two of us is wrong and we will be happy to——

Mr. FRANK. No, no. As to the State of Colorado, I don't set up to be an expert.

Mr. TYSON. I'm putting myself as one of the two, and the author of the letter is the other.

Mr. FRANK. You and Colorado.

So, either you or Colorado is right or wrong about what Colorado can do. The fact that they either don't know they have this power or choose to lie to a congressional committee about pretending not to have it, you still want to count them as one of your 13 stalwarts here.

I get less and less confident. I mean, I agree with the direction in which you are going, that you say you are going. But, I don't know how we are going to get there.

Let me ask you about enforcement, as my last question. The gentleman from Texas who spoke, Mr. de la Garza, who is a great expert in agriculture, says Texas does a lousy job of enforcing. They don't really enforce it at all.

Is he wrong about enforcement now, do you think? Or, do you think they are going to start enforcing it better because of your promulgation?

Mr. BARODDY. We think they will. We intend to take very seriously the whole responsibility we have acknowledged in the Federal Register notice—to look very seriously at State enforcement activities.

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The fact, as I'm given to understand and the record supports, that in the southern part of the State along the Rio Grande Valley the enforcement is very good, encourages us to believe the job is certainly not beyond the ken of State enforcement officials.

Mr. FRANK. Mr. de la Garza, I thought, represented that general area.

Mr. BARODY. I'm sorry, I wasn't here for his testimony.

Mr. FRANK. He said Texas does a lousy job enforcing.

Well, let me do this, Mr. Baroody, because I think that is a very real problem. I mean, I doubt that Colorado does a very good job of enforcing, since they either don't know they have the standard, or pretend they don't have one.

I'm going to ask you if you could, in writing, give us what the proposal is for enforcement monitoring, because I think that is a very real issue.

[The Department of Labor provided the following information:]

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The criteria to be used in judging the effectiveness of a State's effort, including its enforcement, with respect to a field sanitation standard, are detailed in a Federal Register notice issued by the Department of Labor on October 21. OSHA's Regional Administrators will be working with the States' designated representatives to develop their programs. The States will be asked to submit their standards and a description of their intended enforcement effort by January 1987. The adequacy of their enforcement programs will be reviewed and assessed against the criteria published in the October 21 notice. As you are aware, this assessment, along with an assessment of the states' standards, will provide the basis for the Department's determination of the need for a Federal standard.

The States' enforcement programs must:

(a) Designate a State agency responsible for administering the standard.

(b) Provide legal authority for effective enforcement of the standard.

(c) Reflect an adequate commitment of resources, including compliance staff, needed for effective implementation of the standard.

(d) Provide for appropriate inspections, including inspections in response to complaints.

(e) Provide for notice to employees of their rights and obligations under the standard.

(f) Provide for notice to employers and employees concerning alleged violations of the standard, including proposed abatement requirements.

(g) Provide effective methods to compel abatement of relevant hazards.

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Mr. FRANK. Let me ask you—I do want to ask you philosophically, why did OSHA preempt States right to know laws, given what you think about this whole subject?

Mr. BARODY. I'm not an expert on this. I will defer in a moment to Mr. Tyson.

I think the question with respect to State right-to-know—I think you are referring to the hazard communication issue there—deals with hazardous substances in interstate commerce as opposed to the question that is before us, the cleanliness and healthfulness of a particular work site not itself mobile.

Mr. FRANK. I was talking about the workers' right to know, as it is called, or the workers' right to harass, some management thinks it, but talking about the promulgations in States which said "You will tell a worker what chemicals are involved in his or her workplace." It was a workplace-oriented thing.

Now I know some of those had a consumer protection aspect, and the third circuit has just ruled that you didn't preempt the consumer protection aspect. So that is not before us. New Jersey, for instance, the third circuit has said that New Jersey—to the extent that it is a consumer protection aspect, which is what you were just addressing, and you are right that is a part of it, that is not covered. But part of it clearly had to do with workplace protection, persons in the workplace wanting to know what chemicals he or she is working with.

States said, "We have rules." Massachusetts put forward, they worked it out, they had a lot of negotiation back and forth, management, labor, et cetera. They adopted a statute, "Here is our right to know, not as a consumer protection thing, but as something for the individual in the workplace."

And you stepped in and said, "You can't do that. We are going to do it. We are going to take it away from you."

How do you justify doing that when management wants you to preempt, but you don't in the other area?

Mr. TYSON. Two points here. We didn't step in and say that. The courts did.

I mean, the position was taken by the third circuit in two separate cases——

Mr. FRANK. What is your position, what is your view on it?

Mr. TYSON [continuing]. That OSHA does preempt in the manufacture of——

Mr FRANK. Let's not weasel words, Mr. Tyson. Your position was in court that you did preempt, wasn't it?

Mr. TYSON. Yes, it was.

Mr. FRANK. OK. So, you took the position that you want to preempt, is that correct?

Mr. TYSON. Based upon our interpretation of the law.

Mr. FRANK. What is this stuff——

Mr. TYSON. You are talking about a different situation. You are talking about a situation involving extensive interstate commerce; you are talking about products which move in interstate commerce. That is not the situation in a field sanitation issue.

Mr. FRANK. You mean all the vegetables get eaten in California and Texas? They don't get shipped across the——

Mr. TYSON. It's not the product we are covering here.

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Mr. FRANK. Yes it is, you are talking about the—we are not talking about the product itself. We are talking about the right of the worker in the workplace. We are not talking about the consumer protection thing.

The right of the worker now—and the primary motivation here was not consumer protection. It wasn't people worried about what they were eating. It wasn't an FTC or FDA issue. The impetus came from workers and from employees who said, "I don't want to work with this chemical. I, at least, want to know which chemical I am working with so I will know if I should take some precautions," et cetera.

And you preempted that. And you meant to preempt it. Don't blame the courts.

Mr. TYSON. Let me make two distinctions. One is, under hazard communication, we are talking about labeling requirements and requirements for information to go on a material safety data sheet, a tangible issue product.

For the basic kind of concept of "we ought to know," there are two things that OSHA has that apply. One is the standard—well, it is not a standard—a regulation that OSHA has which is called the access to employee exposure and medical records. That standard does not preempt State law and is in place, and States are free to parallel that in their areas.

The issue of hazard communication, the preemption there turns on the fact that the hazard communication standard applies to a product that moves in interstate commerce. Clearly an issue the Congress was concerned about. There is language in the act in section 18 that says, even in a State that has an approved plan, the State is not free to regulate in an area that involves an undue burden on interstate commerce with respect to a product that moves in interstate commerce.

Mr. FRANK. But I don't understand—we are not talking about restricting the movement of the product. Well, first of all, let me go back——

Mr. TYSON. Yes, we are.

Mr. FRANK. How are you restricting the movement of the product?

Mr. TYSON. If there were different labeling requirements from State to State, different requirements for material safety data sheets from State to State, clearly that is an undue burden——

Mr. FRANK. Yes, but the sheets don't have to be on the product. The sheets could have been available to the worker in the workplace.

Mr. TYSON. They have to accompany that product when it moves.

Mr. FRANK. They have to be available. They don't have to go to the store with the product. They have to be there in the workplace.

Mr. TYSON. We are looking into the issue there. That is a separate rule.

Mr. FRANK. You are telling me that the State of Massachusetts requires—and other States—that is simply wrong—that when you ship the computer you had to have the thing in the store? You didn't. You had to have it in the workplace.

Mr. TYSON. The employee has to have access to the information.

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Mr. FRANK. Right. It didn't have to go with the product in interstate commerce. It had to be in the workplace that the employee was at.

Mr. TYSON. Well, it had to get there by moving in interstate commerce. But the product is the key issue.

If there are different requirements for that product and the labeling of that product, and the material——

Mr. FRANK. But they didn't have to be on the labeling of the product itself. The sheets could have been—it was a requirement that the sheets were in the workplace. It did not have to go to the labeling of the product.

Mr. TYSON. But those sheets could be different from State to State.

Mr. FRANK. They could.

Mr. TYSON. If it were not for preemption.

Mr. FRANK. They could. That doesn't burden the product. The product still travels. It doesn't have to go on the product.

Mr. TYSON. But the manufacturer, and the material safety data sheet [MSDS] that will accompany that product, either physically accompany or end up in the same place at the end of the line——

Mr. FRANK. Right, he would have to ship——

Mr. TYSON [continuing]. Is going to have to have a separate MSDS.

Mr. FRANK. Well, he would have to ship the information so the sheets could be filled out in the workplace.

We are talking about the manufacturer himself who is doing it. And it only occurs in those areas where it is being manufactured.

Would you agree with that?

Mr. TYSON. Right now that is true.

Mr. FRANK. That is all the States were trying to do. They were talking about in the workplace itself.

Mr. TYSON. Well, there is a distinction between manufacturing and nonmanufacturing. States right now legally are free to regulate in this area——

Mr. FRANK. I understand that.

By the way, you talked about the nonpreemption in the other area. How did you work that out? Was that statutory?

Mr. TYSON. With respect to this issue, field sanitation issue?

Mr. FRANK. No. You just said you wanted to break this one in two. And with regard to the access to health, there was a nonpreemption there.

Mr. TYSON. Access to health was another case that was litigated by a separate circuit. That was the decision by that court.

Mr. FRANK. What was OSHA's position on that about preemption?

Mr. TYSON. Initial position was that it is a standard. We have since agreed with the court.

Mr. FRANK. Thank you for agreeing with the court. Although with this administration, you can't take that for granted, like the Justice Department.

But what was OSHA's position in court about preemption?

Mr. TYSON. We originally said that that was a standard promulgated under the provisions of section——

Mr. FRANK. And it was, therefore, preemptive?

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Mr. TYSON. Preemption was really not an issue in that rulemaking, the issue was——

Mr. FRANK. Mr. Tyson, please be a little more straightforward. I think you are just being evasive.

You cited this as an example of nonpreemption. Now when I ask you, you say, well, preemption is not relevant. You cited it as an example of nonpreemption because it was litigated that way.

What was OSHA's position on the issue of preemption when it was litigated?

Mr. TYSON. OSHA did not take a position on the issue of preemption. The issue was whether or not it was a standard under section 6(b) of the act.

Mr. FRANK. And if it was, that made it preemptive.

Mr. TYSON. The effect of a standard under 6(b) is preemption.

Mr. FRANK. Right. So, OSHA took the position that included it being preemptive, and you were overruled by that in court and you agreed to abide by it in court, and for that you want a lot of credit.

Again, you have generally taken a position—so your position was that that should have been preempted as well?

The reason I am citing it is that I don't think you are entitled to credit for saying, "Well, see, we allow nonpreemption in this health area" when that was because the court decided over your objection.

Mr. TYSON. Sorry, Mr. Chairman, I was not looking for credit in that regard, I was just trying to explain the law and the legal differences in the situation.

Mr. FRANK. I understand that. The fact is that the court overruled your position that it should have been preemptive.

Mr. Baroody, you are comfortable that there is no federalism argument. We are talking about the worksheets in the workplace, that that is an issue that has to be federalized, but the standards don't?

Mr. BAROODY. Yes, sir. I am quite comfortable with that. It seems it is consistent with current court——

Mr. FRANK. Now let me ask you the last question because we want to get back to the 10.

If the States don't act, what are you going to do about the less than 10? Are you going to preempt it, or are you going to let the States continue to have less than 10?

You made a big point about the less than 10 problem. But, you have also said that if the States don't act you will preempt the whole shebang in 2 years.

Mr. BAROODY. That's one of the reasons why the——

Mr. FRANK. I understand that is one of the reasons. What are you going to do two years from now? Are you going to allow them to continue to regulate their own less than 10, or are you going to knock it out of the box?

Mr. BAROODY. We will allow them to continue to regulate, but, it will set up that curious administrative situation we seek to avoid, where the States may be restricted to regulating from 6 to 10. How they will identify that with any precision and regularity will be a problem.

Mr. FRANK. Really? If it is so hard to identify it, how do you know?

I mean, I don't think it is that hard to do it.

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Mr. BAROODY. Let me raise an additional issue. That would only——

Mr. FRANK. No. Let's deal with this issue first. Raise additional issues later.

Mr. BAROODY. The department's position would be that we would not preempt. But, as we discussed just a moment ago, it is not our call.

Mr. FRANK. You might need some—under your timetable we have got 2 years. If the department wanted to have it statutorily clarified, you can.

In other words, the less than 10 thing, even under your view, you contemplate a situation where we might have to have a Federal standard that covered 11 or more, and the States would be allowed to do less than 10, or less than 11.

Thank you. Mr. Nielson.

Mr. NIELSON. Thank you, Mr. Chairman.

Mr. Baroody, I don't think this has been asked yet. Do you think 18 months is sufficient for the State legislatures to act?

Mr. BAROODY. Yes.

Mr. NIELSON. Many of the States meet only every other year. Some of them are going to start meeting in January. Will they have time enough to consider this in the 45- to 60-day sessions they have in some cases?

Mr. BAROODY. In fact, the Secretary's decision took into account the States' legislative calendars and ensured that most States would have at least two legislative sessions to consider and act, and every State would have at least one.

Mr. NIELSON. There are many States which meet just every 2 years. And many States meet just a short time during those 2 years, such as Idaho, Colorado, and Illinois, to mention a few.

If they don't get it done the first crack, then it would be 2 years down the road before they could finish it.

Now, what pressure are you going to put on these legislatures to make sure they act in 1986?

Mr. BAROODY. We have begun that process with the Secretary's letters to every Governor to try to put them on notice to the urgency he attaches, and in fact the inherent urgency that attaches to acting on this problem.

We would hope that we wouldn't encounter the difficulties you have identified.

Mr. NIELSON. Isn't it true that the States which meet every other year are the ones most likely to have difficulty getting it passed, such as Montana, Idaho, or Colorado?

Mr. BAROODY. I can't comment on that. It may well be that that is the case, sir.

Mr. NIELSON. Is it possible that you could give them maybe two sessions, maybe 1986 and 1988, in which to finish? In other words, give them more than 18 months? Is that possible?

Mr. BAROODY. The Secretary's timeframe is pretty settled in his own mind at 18 months.

It was after taking into account these issues that he arrived at that timeframe.

Mr. NIELSON. Let me ask a question of Mr. Tyson.

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As you were being questioned, I saw a little gadflying approach here. First the question was, are you going to allow both State and Federal standards to be in effect in the same State? Are you going to allow the States to cover farms with 10 or less employees, and the Federal those with 11 or more?

Are you going to allow that, first of all?

Mr. TYSON. It will really not be up to us. The only issue before us is whether or not we legally will take the position that in our interpretation of the Federal act, that activity would be preempted.

OSHA and the Department of Labor have taken the position some time ago that there would not be preemption in that case, but I can see real administrative problems with such an arrangement. And I think the States would see some as well.

Mr. NIELSON. The point you were trying to make earlier, about the fluctuating number of workers—you might have 6 workers this season, you might have 12 the next season.

Do you think that is going to be a real problem?

Mr. TYSON. I can envision situations where the State inspector would come in and find out there were 11 farmworkers on that particular operation. He would have to leave and the Federal would come back a day later. Maybe there would be eight that day, and he would have to leave.

Mr. NIELSON. So it would end up with both of them dropping the ball?

Mr. TYSON. Administratively, it would be serious.

Mr. NIELSON. What about the possibility of what you do with State administered OSHA programs. If the State can demonstrate it has a more effective program, then the Federal will allow the State to handle the whole bit? Does that contemplate——

Mr. TYSON. Clearly that is an option in this area. Although again, looking at the administrative practicality of the issue, we would have to look at a program by the State which covered something more than just the issue of field sanitation. We would look at a State plan that covered the issue of agriculture, for example, that would cover not only field sanitation, but other standards that OSHA has which apply to farming operations. We would entertain that and think a plan that operated along those lines would be administratively practical.

Mr. NIELSON. In an exchange you had with the chairman, I still came away with an unclear statement on both parts.

Are you suggesting the reason you would rather go to a Federal basis, with each State enforcing its own standard, is because of these two problems we talked about, the overlap of jurisdiction and the question of who could have the best standard? Is that the problem?

Mr. TYSON. That is only some of the problem. There is a basic feeling by myself and many others that in this situation the States are in a better position to regulate the issue. It is so intertwined with public health issues, which have traditionally been a State role, that it would be most appropriate for the States to also address this issue.

The Secretary said if they don't, however, it will become one that will be regulated federally.

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Mr. NIELSON. I had to leave during the Farm Bureau presentation. But apparently he disagreed with Congressman de la Garza as to the effectiveness of the Texas law.

Congressman de la Garza said it was not enforced very well. It was a good law but not enforced very well. The Farm Bureau seemed to think it was enforced.

What is your view of that?

Mr. TYSON. The record's evidence before us shows again in the Rio Grande Valley there is 80 to 85 percent compliance with the standard. Other parts of the State may be less.

That issue—the effectiveness of the State laws is going to be one that will be looked at as we go through this process. That issue has not been the primary focus of attention in the rulemaking prior to this time. And clearly that will be one of the issues the Secretary would have to—and one of the most important issues that the Secretary would have to look at.

Some guidelines have been put forward in the Federal Register notice that came out last month, but we would have to explore that in much more detail.

Mr. NIELSON. Mr. Baroody, let me ask you a general question. There seemed to be a difference of opinion between Mr. Tyson and the chairman as to how optimistic you were about how many States might do something in the next 18 months.

The legislative situation might be a problem in some instances, as I have indicated. But, aside from that, Mr. Tyson seemed to feel he has got 13 on board, and you have got a good shot at the rest of them, or at least enough of them to make it so we won't need to have a Federal standard.

Mr. Frank is saying that, of those 13 you are counting, some shouldn't be counted.

What is your view on that? How many do we have that are complying now, and are you as optimistic as your colleague?

Mr. BARODY. Mr. Nielson, I think the effect of the Secretary's decision is twofold on point to your question.

First of all, it is very clear that he has made a decision—that he has in fact made a decision, made a commitment for the first time in the history of the issue.

And second, relevant to your question, that he has consciously, in the way he has made that decision, brought the States in, invited them to participate, encouraged them by his statements as he will by his actions during the course of the next 18 months, to take this matter seriously.

Over the course of the last 13 very contentious years on this issue, that has really never been an active factor. The issue has been framed in polar terms—a Federal standard, or no Federal standard. The Secretary has sought—because he thinks it is the right and potentially much more effective way to go—consciously to involve the States in this operation. I think they will take that charge seriously. I think they are as serious about protection of people within their borders as many in this city are serious about it nationwide.

I am very optimistic, to answer your question.

Mr. NIELSON. So your optimism is more on the basis of a change in attitude in the Department of Labor, partly, and the expectation

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that the States will act, rather than on their performance up to this point. Mr. Tyson appeared to be optimistic based on the performance.

Is that a fair statement?

Mr. BARODY. Yes, I think that is a fair statement.

Mr. FRANK. Would the gentleman yield to me for a second?

Mr. NIELSON. Be glad to.

Mr. FRANK. I think—I realize you came in a little late—you have misstated the substance of my remarks to Mr. Tyson. Mr. Tyson, according to the remarks he made on television appeared to be pessimistic up to the point of October 23. He had a great burst of enthusiasm after that television interview. But he was pessimistic——

Mr. TYSON. Let me characterize it.

I think the statement was, frankly, "they may not." Was that not the quote that you suggested?

Mr. FRANK. Right. When you were asked if they were going to do something, that was your sole answer. You don't—and I think most people would view that as more negative than positive.

Mr. NIELSON. Reclaiming my time, don't you think, Mr. Chairman, though, if I may ask you, don't you think there has been a change in attitude that might make it a little more possible to get some development than we had a year ago, let's say?

Mr. FRANK. Not based on the evidence I have been able to see, when Wisconsin writes in——

Mr. NIELSON. I'm talking about the evidence of what Secretary Brock has just done, and the fact that he has had meetings with the States and so forth.

Mr. FRANK. Yes. Because we have heard from some such as these States subsequent to that. We have heard from New Mexico and Wisconsin subsequent to Secretary Brock saying no. I mean, Wisconsin was cited as one of the encouraging ones, and subsequent to Secretary Brock's action, Wisconsin wrote and said, not us.

Now, I would like to be optimistic, but it is a strange form of federalism when you know Colorado better than Colorado and Wisconsin better than Wisconsin. I'm less inclined to impose my views.

Those two States differed specifically.

Mr. NIELSON. Of course, I would respond to Colorado, look at what California and Texas have done on their own without Federal regulation. Colorado certainly could enact a standard, and has been able to for 13 years or even 20 years.

Mr. FRANK. If the gentleman would yield back to me for a second?

Mr. NIELSON. In a moment.

Colorado has not done it, or doesn't think they can do it. They must not be looking at what the other States are doing. So, I think Colorado is way out in left field, frankly. They are my neighbor State, I border them, but I still feel that in this letter, they don't know what they are doing.

Mr. FRANK. If the gentleman would yield to me, I am not here speaking as an advocate for the State of Colorado, where I only go when we have problems over Federal centers, as you well remember.

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The question you asked me is, am I optimistic. Now, you are giving reasons——

Mr. NIELSON. No, no, I didn't say that.

Mr. FRANK. Did I think there was going to be a change in the attitude. And I said, I don't see one. I agree they have had 13 years, and I don't think they are going to change after 13 years. I hope I'm wrong.

Mr. NIELSON. What I said was, they are optimistic on two counts. One, because of the performance that has happened. The other on the change in attitude. I said, if you recall, you were pessimistic because performance has not been——

Mr. FRANK. No, I cited specifically two States subsequent to Secretary Brock's action, who give me reason to continue to be pessimistic. Colorado and Wisconsin talked to us in letters after the Secretary's attitude.

Mr. NIELSON. And you questioned Mr. Tyson's view of what progress had been made. That was the point I was making. And I was here to hear that particular exchange.

I might ask a couple of questions. In general, do you think the States should do what—let me rephrase the question.

Can the State do a better job localizing their standards than the Federal, in general? Is that the view of the department?

Mr. BARODY. Yes, sir.

Mr. NIELSON. The State, knowing the local conditions, could handle it better than the Federal in general?

Why? Because the Federal has to make it so broad that it doesn't particularly fit any of the States? Is that part of the problem?

Mr. BARODY. It would be so broad as to less than perfectly fit any particular State. The States could, instead, tailor the requirements to the specific needs of individuals, crop circumstances, terrain differences, any of the host of differences that would apply State to State.

Mr. NIELSON. Would you be willing, if the Secretary decides in 18 months that the States are not moving fast enough, to have a national standard—would you be willing to recommend that he allow a State to do their own, if they can do it better than the Federal standard? Would you allow a State to take it over if they can show that they can do it better than the Federal? As you do with OSHA in general.

Mr. BARODY. Well, there should be—it must be clear, I think, that the Secretary's decision says that in the finding that you have outlined, there will be a Federal standard, and I think of necessity it would have to be uniform.

Mr. NIELSON. My question was, would you recommend to the Secretary he allow the States to do it on their own if they can do better than a Federal standard. That is my only question. As you do with OSHA in general.

Mr. TYSON. Is your question in the context of an OSHA-approved State plan?

Mr. NIELSON. Yes.

Mr. TYSON. In that situation, clearly under the law, we would encourage States to do it. They would have to do at least as much as we, but we would encourage them to do more.

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Mr. NIELSON. But the point is, if they can do better taking into account their individual circumstances, should they be allowed to do that?

Mr. TYSON. They would be allowed to do so, yes.

Mr. NIELSON. OK. The second question is related to that. If they are willing to cover all workers from zero up to whatever number rather than let you cover beyond 10 workers, would you allow them to take care of the whole thing? Or, would you make them stop at 10 as the chairman suggests you would have to by the law?

Mr. TYSON. I think that legally our position would not be that important, because legally, it is fairly clear that if we had a standard which covered 10 and more, and a State had a standard which covered zero to infinity, they would only—that State would only be allowed legally to enforce 0 to 10.

Mr. NIELSON. That's a contradiction of what Mr. Baroody just told me. He said he would be willing to let the State take precedence if they could show they could do better.

Mr. TYSON. That was in the context of a State program, where a State has an OSHA-approved plan.

Mr. FRANK. Would the gentleman yield?

Isn't there a distinction, OSHA is allowed, as I understand it, to delegate enforcement but not necessarily the promulgation of the standard. I think that may be part of it.

Mr. TYSON. No, they are both delegated. There are tests for each.

Mr. NIELSON. What I am suggesting is—I don't know what your experience has been with State plans. It is mixed, I am sure, but you allow a State to have its own plan on OSHA.

Could you do that same thing with field sanitation standards? Would you recommend that approach? That's all I'm asking.

Mr. TYSON. OK. I apologize if I am not understanding your question correctly.

In the context of an approved OSHA State plan, our position would be yes, the States would be permitted to do so, but that approved OSHA State plan would have to cover more than just the narrowly defined issue of field sanitation. We would look for a State to cover a broader issue—that issue primarily being one just of agriculture—because of the administrative problems of having a State inspector on your farm one day, a Federal inspector inspecting something else the next day.

Mr. NIELSON. Aren't you discouraging the States from coming up with their own standard then?

It sounds to me like you are creating an impossible situation for them. They would have to be better than you in some areas, and they are going to have to cover a much broader area, more than just sanitation.

Mr. TYSON. That doesn't take into account the whole issue of the appropriations rider.

Mr. NIELSON. Aren't you making it almost impossible for a State to do this, is what I am asking.

Mr. TYSON. I don't believe we are. I mean, we are encouraging them and will help everywhere we can. We are saying we will work with them on development of those plans.

Mr. NIELSON. You are saying, you will let them take up to 10. The law precludes above 11. But, you earlier said if they had a

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better plan you would allow them to follow their plan. But now you are saying the plan has got to encompass more than just sanitation, it has got to cover the entire field of agriculture.

That is much broader than this issue here.

Mr. TYSON. It is not greatly broader. There are only about six standards in addition to field sanitation, which apply in agriculture.

Mr. NIELSON. Still broader?

Mr. TYSON. It is broader, yes, sir.

Mr. NIELSON. It does make it more difficult for a State to meet the recommendations.

I am just saying, aren't you committing the States to failure before you start?

Mr. TYSON. Again, that doesn't take into account the issue that, all of that discussion aside with respect to preemption, the State would still be able to enforce in the area of 10 or fewer, where we cannot go. We would encourage them to take this action, even if the ultimate resolution was preemption as a result of the imposition of a Federal standard.

Mr. NIELSON. What is the incentive for a State to do that if they know their authority stops at 10, and that you are going to take over from that point on? What is the incentive for them to even go that far?

Mr. TYSON. The incentive of covering this issue, providing the protection for the employees of that State.

Mr. NIELSON. Wouldn't it be a greater incentive if they had some feeling that maybe you would allow them to handle the whole program all by themselves, a federalist type program that Mr. Baroody seemed to prefer? Wouldn't there be more incentive to make some progress if they had that possibility before them?

Mr. TYSON. There perhaps would be, although I think they would see the same types of administrative problems at having to cover just that one area. And the citizens of that State would see the same kind of administrative problems as we do.

We do not preclude a State from submitting a plan that would just cover only field sanitation. We would entertain that.

My own view, from my standpoint, is that such a plan would present problems with respect to the administrative practicality of a plan covering just that very narrow issue.

Mr. NIELSON. I have another meeting I have to go to, and I apologize for that. But I appreciate your response. Thank you.

Mr. FRANK. I thank the gentleman.

I want to call on the gentleman from New York. Would you yield to me for 1 minute?

Mr. OWENS. Be glad to.

Mr. FRANK. Thank you.

Before the ranking minority member leaves, let me say I very much agree with the line of questioning he was just on. And I would ask perhaps, no matter what happens, whether we have to do a Federal standard now, or may have to do one later, if we ever have to do one, if the Department might agree to language which I have got in my bill, which I think is exactly what the gentleman from Utah was talking about, there is a provision in the bill as drafted which says:

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"This act shall not preempt any State occupational health and safety standard, or any provision thereof, which is more effective in providing sanitized potable drinking water and toilet and hand washing facilities * * *" et cetera.

In other words, it would explicitly allow you to do that for less than an entire State plan. I think that meets the point that the gentleman from Utah was making.

Assuming that at some point you might have to promulgate a standard—and I understand you hope you don't have to—I guess the gentleman from Utah and I would agree that that provision ought then to be enacted by us to make it clear that you could do that.

Would you find any problem with that?

Mr. TYSON. I'd be happy to work with you on that. I can't commit—I haven't seen that language. It obviously addresses the point that——

Mr. FRANK. That point, less than the full thing.

Also, I did want to just clarify, the gentleman from Utah asked me about my basis for pessimism. We are all pessimistic, I think, based on the past record, including Mr. Brock. My point is whether or not Mr. Brock's recent statement gave any reason to be less pessimistic.

What I was citing was, the States of Colorado and Wisconsin have specifically, after Mr. Brock's approval of this proposal, said, no, we still think there are going to be problems. I'm specifically pessimistic based on those two and what they said, and New Jersey, North Carolina and other States, based on what their representatives have said.

I haven't heard any State say, hey, that's great and now we are going to move. I have invited that, and I hope we have got some. Maybe you have heard some, and I would hope you would share that with the committee.

I would just also make note, I am going to write to the Colorado Department of Health to ask them whether they were lying, or whether they didn't understand the thing, or what the story is. And I will make that a part of the record, so we will try and get a clarification from Colorado as to the dispute between them and Mr. Tyson.

Mr. TYSON. Would you permit us also to put whatever evidence we have in the record——

Mr. FRANK. Any evidence you have of the States moving in the right direction, certainly.

[The Department of Labor provided the following information:]

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The State of Colorado submitted a letter for the record of OSHA's rulemaking on field sanitation which explains that Colorado has had sanitary standards for agricultural fieldworkers since 1968. It further indicates that the Colorado Division of Employment and Training has been enforcing Section 4.5 and 5.3 of the "Sanitary Standards and Regulations for Labor Camps," which were adopted by the Colorado State Board of Health in June 1968.

Section 4.5 of the standards requires potable water to be readily available to both shed and field workers. In addition, the provision prohibits the use of common drinking cups. It further stipulates that all tanks and receptacles used for storage or dispensing of water must be constructed so that water will be kept and dispensed in a clean and sanitary condition.

Section 5.3 of the standards requires that toilet and handwashing facilities be provided for use by shed and field workers within one-quarter of a mile from the farthest point of the work site at the rate of one for every 25 persons of each sex. It further stipulates that if less than 10 persons are employed at the site, one toilet and handwashing facility may be shared by both sexes.

For the record of OSHA's rulemaking on field sanitation, 12 other States have submitted evidence of their activities in this regard.

(Material maintained in Subcommittee Files)

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CO State Laws 2-1

RICHARD D. LAMM
Governor

JOB SERVICE OF COLORADO

DIVISION OF EMPLOYMENT AND TRAINING

251 EAST 12TH AVENUE / DENVER, COLORADO 80203
AREA CODE 303, TELEPHONE 839-5833

John Kezer
Director

March 15, 1983

11-072

OSHA Docket Officer
Docket No. H-308, Room S-6212
Frances Perkins Building
Third Street and Constitution Avenue, N.W.
Washington, D.C. 20210

Sir:

Having just read "Noticias de la Semana", for the week of March 7, 1983, regarding OSHA's effort to develop field sanitation standards for agricultural workers, you might be interested in knowing that we in Colorado have had sanitary standards for agricultural workers since 1968.

The Colorado Division of Employment and Training has been enforcing Sections 4.5 and 5.3 of the "Sanitary Standards and Regulations for Labor Camps", adopted by the Colorado State Board of Health on June 18, 1968. Agricultural employers are required to meet these two sections when placing job orders with our local employment offices.

Farm labor housing is inspected in accordance with either the full set of standards set forth at 29 CFR 1910.142 or the full set of standards set forth at Part 654. We do not use the State standards when conducting housing inspections although they are similar to the federal standards.

We are enclosing a copy of the State Standards for your review. Perhaps they may be helpful to you in developing field sanitation standards.

Sincerely,

Nick F. Pacheco
Rural Manpower Service

NFP:cgz
Enclosure

JOBS FOR PEOPLE • PEOPLE FOR JOBS

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SANITARY STANDARDS AND REGULATIONS FOR LABOR CAMPS—ADOPTED BY THE COLORADO STATE BOARD OF HEALTH, JUNE 18, 1968

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COLORADO DEPARTMENT OF HEALTH
4210 East 11th Avenue
Denver, Colorado 80220

SANITARY STANDARDS AND REGULATIONS

FOR LABOR CAMPS

1.0 ADMINISTRATION

1.1 AUTHORITY: Chapter 66-1-7 (14), Colorado Revised Statutes 1963

1.2 ADOPTED: Colorado State Board of Health, June 18, 1968

1.3 EFFECTIVE DATE: August 1, 1968

2.0 DEFINITIONS

For the purpose of these regulations:

2.1 Labor camp, hereinafter referred to as "camp," includes one or more buildings or structures, trailers, tents or vehicles, together with any land appertaining thereto, established, operated or used as temporary living quarters for one or more persons engaged in agriculture, related food processing, industry, construction, commercial transportation or lumbering.

2.2 Person means an individual or group of individuals, association, partnership or corporation.

2.3 Camp operator means the person who owns, has charge, care or control of housing in labor camps as defined.

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2.4 Shelter means any structure of one or more rooms, trailers, tents or vehicles which are used for sleeping or living quarters.

2.5 Habitable room means a room or enclosed floor space used or intended to be used for living, sleeping, cooking or eating purposes -- excluding bathrooms, toilets, laundries, pantries, foyers or connecting corridors, closets or storage space.

2.6 Sanitary facilities mean toilets, privies, wash basins, showers, tubs, laundry tubs, urinals and the rooms provided for installation and use of these units.

2.7 Refuse means all combustible or noncombustible, putrescible or non-putrescible solid or liquid wastes, including garbage, rubbish, ashes and sewage.

2.8 Garbage means all putrescible animal and vegetable wastes resulting from the handling, preparation, cooking and consumption of food.

2.9 Dwelling unit means one or more habitable rooms which are occupied or designed to be occupied by one family and which provides facilities for living, sleeping, cooking or dining.

2.10 Family consists of two or more persons in the same household who are related to each other by blood, marriage or adoption.

2.11 Occupant means any person over one year of age, living, sleeping, cooking, eating or having actual possession of a building or part thereof.

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2.12 NUISANCE

The following shall be defined as nuisances:

a. Any public nuisance known at common law or in equity jurisprudence;

b. An attractive nuisance known at common law or in equity jurisprudence;

c. Whatever is dangerous to human life or detrimental to health;

d. Overcrowding a room with occupants;

e. Insufficient ventilation or illumination;

f. Inadequate or unsanitary sewerage or plumbing facilities;

g. Unsanitary conditions;

h. Whatever renders air, food or drink unwholesome or detrimental to the health of human beings.

3.0 CAMP SITE

3.1 All camp sites shall be well drained, graded and surfaced, where necessary, and free from depressions in which water may stagnate.

3.2 No camp shall be located on a site which is subject to or may cause health or safety hazards, unless acceptable safeguards are provided.

3.3 No camp structure shall be located less than 50 feet from any barns, pens or similar quarters for livestock or poultry.

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3.4 Where electric service is available within 500 feet of the premises, all camp sites shall be lighted at night to illuminate the grounds and buildings adequately. All camp sites shall be adequate in size with buildings so located as to facilitate fire, flood, safety and disease control.

3.5 The camp grounds shall be maintained in a clean, safe and sanitary condition. All garbage and refuse shall be collected by the occupants and disposed of by the camp operator so as to prevent nuisance conditions. All camp grounds, buildings and facilities shall be left by the occupants in a clean and sanitary condition.

3.6 The camp operator shall be responsible for the clean, safe and sanitary condition of the premises prior to each occupancy.

4.0 WATER SUPPLY

4.1 The camp water system shall be designed, constructed and protected so as to assure that safe, potable and adequate water supply is produced for domestic purposes in compliance with Colorado Department of Health regulations.

4.2 No surface or cistern water supply shall be used except under conditions approved by the Colorado Department of Health. When such a facility is approved for use, water shall be obtained from an acceptable source and transported in an approved tank. Such stored water shall contain a chlorine residual of at least 0.3 p.p.m.

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4.3 Well and cistern water supplies, not under pressure, shall be properly protected and provided with an enclosed, self-priming type pump. Open pitcher pumps are not permitted.

4.4 Where water is distributed under pressure, the water supply system shall deliver water at normal operating pressures (minimum 20 lbs. per square inch) to all fixtures at a rate of at least 20 percent of the total daily required volume needed for any one hour peak use period. The water supply system shall be capable of delivering at least 35 gallons of water per person per day.

4.5 Potable drinking water shall be readily available to both shed and field workers. The use of common drinking cups is prohibited. All tanks and receptacles used for storage or dispensing of water must be constructed so that water will be kept in a clean and sanitary condition.

4.6 Adequate facilities for providing hot water for bathing, laundering and dishwashing purposes shall be available in all camps.

4.7 In existing camps, all shelters or habitable areas shall be located within 100 feet of a water supply outlet. Drainage facilities shall be provided to accommodate the overflow or spillage from such outlets to prevent contamination or nuisance conditions.

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4.8 In all camps hereafter constructed, water under pressure shall be supplied to all dwelling units and to all other buildings in which cooking is permitted or which contain toilet, bathing, laundry or dishwashing facilities.

5.0 EXCRETA AND LIQUID WASTE DISPOSAL

5.1 Facilities shall be provided and properly maintained in all camps for the disposal or treatment and disposal of excreta and liquid wastes.

5.2 Where public sewer systems are available, all building sewers shall be connected thereto. If public sewer systems are not available, private sewage disposal systems which meet the requirements of the Colorado Water Pollution Control Commission shall be installed.

5.3 Toilet and handwashing facilities, for use by shed and field workers, shall be provided within one-quarter of a mile from the farthest point of the work site at the rate of one for every 25 persons of each sex. If less than 10 persons are employed at the site, one toilet and handwashing facility may be shared by both sexes.

6.0 GARBAGE AND OTHER REFUSE DISPOSAL

6.1 Metal containers with tight fitting lids shall be provided for handling, storing and disposing of garbage and refuse to control odors, insects, rodents and other nuisance conditions.

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7.0 INSECT AND RODENT CONTROL

7.1 Rodents and insects shall be controlled by establishing sanitary practices, insect and rodent proofing of buildings, extermination or other safe and effective control methods.

8.0 SHELTER

8.1 Dwellings and service buildings may be of any type construction; but shall be structurally sound, provide protection for the occupants against the elements and shall be so constructed as to facilitate cleaning and afford privacy. Shelter structures shall be maintained in good repair and in a clean and safe condition. Tents may be used not to exceed 14 days per season, subject to prior approval of the health department.

8.2 Floors of habitable buildings, including tents, shall be constructed of wood, asphalt, concrete or other comparable materials and shall be smooth finished with an elevation of at least six inches above surrounding grade and so located as to prevent the entrance of ground and surface water.

8.3 In all shelters, hereafter constructed, not less than two rooms or partitioned areas shall be provided for each family composed of husband and wife or one parent and one or more children six years of age or older, except that separate sleeping rooms or partitioned areas shall be provided for children of the opposite sex over 10 years of age. When single workers are housed, separate sleeping accommodations shall be provided for each sex.

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8.4 In all shelters, each room designed or used for sleeping purposes shall contain at least 50 square feet of floor area for each occupant six years of age or older and 25 square feet of floor area for each person under six years of age. When double deck bunk beds are used, at least 35 square feet of floor area for each person six years of age or older and 25 square feet for those under six years of age shall be provided.

Not less than 60 square feet of floor area shall be provided for each person for combined eating, sleeping and cooking purposes. In a house trailer or vehicle furnished by a person other than the occupant, there shall be at least 20 square feet of clear floor area for each person sleeping therein.

8.5 At least one-half of the floor area of each habitable room shall have a minimum ceiling height of seven feet. No floor area shall be counted where the ceiling height is less than five feet. No habitable room, except kitchens, shall be less than seven feet in any dimension.

8.6 Each habitable room shall have at least one window opening directly to the out-of-doors. The minimum total window area shall be at least 10 percent of the floor area of each room. At least one-half of the required window area shall be openable.

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8.6 (Continued)

All exterior openings of habitable and service buildings shall be protected with fly screening of not less than 16 mesh. All screen doors shall be equipped with self-closing devices.

8.7 All buildings, in which 10 or more people sleep or eat, or otherwise occupy, shall have not less than two exits leading to the outside or to a public corridor leading to the outside. Exits shall be so located on each floor as to provide alternate means of egress. Sliding and overhead rolling doors are not approved as meeting exit requirements.

A landing shall be provided beyond each exterior door opening and beyond each interior doorway opening to a stairway. Such landings shall have a width and depth of not less than the door opening.

8.8 In dwelling units having an occupancy of less than 10 persons, one of the required exits may be an openable window if it is sufficient in size and affords safe access to the ground level.

8.9 Each dwelling unit shall have direct access to the outside or to a common hallway which has access to the outside.

8.10 All stairways with four or more risers shall be provided with a handrail. The rise of each step in a stairway shall not exceed eight inches, and the run (tread) shall not be less than eight inches. Every stairway shall have headroom clearance of not less than six feet.

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9.0 HEATING

9.1 Where climatic conditions require artificial heating, all dwellings and shower rooms shall be provided with heating facilities which are properly installed, maintained in a safe working condition and which are capable of maintaining a room temperature of sixty-eight degrees Fahrenheit (68° F.) in all habitable rooms.

9.2 No open flame gas or oil fired kitchen stoves, hot plates or unvented heaters shall be approved for heating purposes.

10.0 LIGHTING

10.1 Where electric service is available within 500 feet of the premises, each habitable and service room shall be provided with at least one ceiling-type light fixture and at least one separate electric convenience outlet. Electric wiring shall be installed and maintained in accordance with provisions of the National Electrical Code.

11.0 HOUSEHOLD EQUIPMENT AND FURNISHINGS

11.1 All dwellings shall be provided with sufficient basic household equipment. This equipment shall include tables, chairs, beds and shelving or hooks for storing clothing.

11.2 Suitable sleeping facilities shall be available for each occupant, consisting of beds, bunks or cots complete with springs and mattresses, which shall be clean, in good repair and so constructed as to afford reasonable comfort.

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11.3 Mattresses and pads with covers, bed covers and other bedding, if furnished by the operator, shall be in a sanitary condition upon each change of occupancy.

11.4 Every bed, bunk or cot shall have a clear space of at least 12 inches from the floor. Triple-deck bunk facilities are prohibited, and multiple occupancy of double beds shall be allowed only in family groups. Single beds shall be spaced not closer than 36 inches laterally or end to end. Double-deck facilities shall be spaced not less than 48 inches laterally or 36 inches end to end. There shall be a clear ceiling height above a mattress of not less than 36 inches and a clear space of at least 27 inches between the mattresses of a double-deck bunk.

12.0 COOKING AND EATING FACILITIES

12.1 All housing, whether for single family or common use, shall be provided with a space equipped for use as a kitchen. Sufficient counters, shelves, stoves and dishwashing equipment shall be provided. If electricity is available, mechanical refrigeration shall be provided.

12.2 Physical facilities and the operation and maintenance of centralized food service operation shall conform to the physical and operational requirements of the Colorado Restaurant Sanitation Laws, Rules and Regulations.

13.0 TOILET, LAVATORY, BATHING AND LAUNDRY FACILITIES

13.1 Toilet, lavatory, bathing and laundry facilities shall be installed and provided in the minimum numbers required by

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13.1 (Continued)

provisions of the Colorado Plumbing Regulations, when water under pressure is available to the camp.

13.2 When water under pressure is not available to the camp, equivalent facilities shall be provided.

13.3 In multiple family or dormitory occupancies, required sanitary facilities are as follows:

a. Toilets

One for each 10 persons of each sex;

b. Urinals

One for each 25 males;

Urinals may be substituted for up to one-third of the required number of toilets;

Twenty-four inches of trough urinals shall be considered the equivalent of one urinal or toilet.

Men's toilet rooms with water closets, hereafter constructed, shall also include urinals.

c. Lavatories

One for each 10 persons or 24 lineal inches of a wash sink, tray or trough.

d. Bathing Facilities

One for each 10 persons;

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e. Other Fixtures

A kitchen sink shall be provided in each common or centralized food preparation area. A laundry tray shall be provided for each 50 persons.

13.4 If separate dwelling unit structures are used, individual or centralized sanitary facilities shall be provided as follows:

a. Toilets

One for each dwelling unit or one for each 10 persons of each sex;

b. Lavatories

One for each dwelling unit or one for each 10 persons of each sex;

c. Bathing Facilities

One for each dwelling unit or one for each 10 persons of each sex;

d. Other Fixtures

A kitchen sink shall be required in each dwelling unit hereafter remodeled or constructed.

13.5 Hot and cold water under pressure shall be supplied to all required plumbing fixtures in common use facilities except that cold water only shall be supplied to water closets. Tempered water may be delivered to showers and sinks to conserve heat and heating equipment.

13.6 Required plumbing fixtures shall be maintained in good working order and in a clean and sanitary condition.

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13.7 Service buildings housing such required fixtures shall be constructed of easily cleaned, non-absorbent materials, maintained in good repair and in a clean and sanitary condition and conveniently located at a distance of not more than 200 feet from any dwelling structure.

13.8 In multiple family and group type occupancies where sanitary facilities are shared, separate rooms containing required plumbing fixtures shall be provided for each sex. If located in the same building, they shall be separated by a solid wall extending from floor to ceiling. These rooms shall be marked distinctly "For Men" or "For Women."

13.9 Shower heads shall be spaced at least three feet apart with a minimum of nine square feet of floor area per shower head. Dressing room space, equivalent to the size of the shower floor area shall be provided adjacent to bathing facilities. No toilet space shall be less than 30 inches in width, and there shall be not less than 30 inches of clear space in front of a toilet.

13.10 The floors of utility buildings shall have a smooth, impermeable and easily cleaned surface, sloped to drain. Floor drains, properly trapped, shall be provided in all shower baths and shower rooms to remove waste water and to facilitate cleaning. The walls and partitions of such buildings shall be constructed of smooth, non-absorbent materials and finished to the splash level.

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14.0 PRIVIES

14.1 Privies shall not be located less than 50 feet nor more than 200 feet from any shelter they serve and shall be so constructed and maintained as to meet the rules and regulations of the Colorado Water Pollution Control Commission.

14.2 Privies shall be constructed with tight fitting and self-closing doors, impervious floors and risers. They shall be fly-tight and maintained in good repair and a clean condition. Each privy building shall be ventilated by a screened opening of at least 144 square inches. Seat risers shall be of reasonable height and shall be maintained in good repair. The pit shall be covered when excreta reaches a point one foot below ground level and the privy moved to a new location.

14.3 Except for those serving single family dwellings, separate privy facilities shall be provided for each sex. Privy seats for each sex shall be provided in the ratio of not less than one such unit for each 10 persons.

15.0 FIRE PROTECTION

15.1 All premises; the buildings and related facilities shall be maintained and used in a manner as to prevent fire in accordance with applicable local fire prevention regulations.

16.0 PENALTIES

16.1 Pertinent sections of Colorado Revised Statutes 1963 read as follows:

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16.1 (Continued)

"66. 1-14. UNLAWFUL ACTS -- PENALTIES. -- (1)

(a) It shall be unlawful for any person, association, or corporation, and the officers thereof:

(b) To willfully violate, disobey or disregard the provisions of the public health laws or the terms of any lawful notice, order, standard, rule or regulation issued pursuant thereto; or

(g) To willfully fail to remove from private property under his control at his own expense, within forty-eight hours after being ordered so to do by the health authorities, any nuisance, source of filth, or cause of sickness within the jurisdiction and control of the department, whether such person, association, or corporation shall be the owner, tenant or occupant of such private property; provided that when any such condition is due to an act of God, it shall be removed at public expense...

(4) Any person, association, or corporation, or the officers thereof, who shall violate any provision of this section, upon conviction, shall be fined not to exceed one thousand dollars or be imprisoned, for not to exceed one year, or be both fined and imprisoned, and in addition to such fine and imprisonment shall be liable for any expense incurred by health authorities in removing any nuisance, source of filth, or cause of sickness. Conviction under the penalty provisions of this article or any other public health law shall not relieve any persons from any civil action in damages that may exist for any injury resulting from any violation of the public health laws."

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17.0 REMISSION

17.1 The Colorado State Department of Public Health Regulations captioned, "Sanitary Standards--Industrial and Labor Camps," adopted March 12, 1962, effective April 19, 1962, are hereby RESCINDED.

IN RESPONSE TO INQUIRY FROM THE SUBCOMMITTEE, THE COLORADO DEPARTMENT OF HEALTH REPLIED AS FOLLOWS:

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COLORADO DEPARTMENT OF HEALTH

Richard D. Lamm
Governor

Thomas M. Vernon, M.D.
Executive Director

DECEMBER 6, 1985

THE HONORABLE BARNEY FRANKS
HOUSE OF REPRESENTATIVES
ROOM B-349-A
RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, D.C. 20515

RECEIVED

DEAR REPRESENTATIVE FRANKS:

WE WOULD LIKE TO OFFER THE FOLLOWING ADDITIONAL INFORMATION REGARDING STATE STATUTE, RULE OR REGULATION AND ENFORCEMENT AS IT REGARDS FIELD SANITATION FOR AGRICULTURAL WORKERS IN COLORADO. BECAUSE THERE IS NO SPECIFIC STATUTORY REQUIREMENT CONCERNING FIELD SANITATION, THERE WILL BE INTRODUCED INTO THE 1986 COLORADO LEGISLATURE, A BILL CONCERNING THE PROVISION OF POTABLE DRINKING WATER, TOILETS, AND HANDWASHING FACILITIES FOR AGRICULTURAL WORKERS. A DRAFT COPY OF THAT LEGISLATION IS ATTACHED. ALSO, WE HAVE JUST COMPLETED A SURVEY OF AGRICULTURAL FIELDS IN COLORADO AND HAVE FOUND NO FIELDS THAT COMPLY WITH STANDARDS AS DESCRIBED IN H.R. 3748. ONLY 16% OF THE FIELDS HAD ACCEPTABLE TOILETS, ONLY 1% HAD HANDWASHING FACILITIES, AND NONE HAD ACCEPTABLE DRINKING WATER. A COPY OF OUR STUDY IS ATTACHED.

WHILE THERE IS NOT AN EXISTING STATUTE OR RULE OR REGULATION THAT APPLIES TO FIELD SANITATION IN AGRICULTURE IN COLORADO, THE STATE BOARD OF HEALTH, IN 1968, PASSED SOME REGULATIONS REGARDING LABOR CAMPS AND AGRICULTURAL LAND APPERTAINING THEREUNTO. THIS REGULATION WAS ENFORCED BRIEFLY IN THE LATE 1960'S PRIOR TO THE ADVENT OF THE PASSAGE OF THE COLORADO OCCUPATIONAL SAFETY AND HEALTH ACT. THE COLORADO OCCUPATIONAL SAFETY AND HEALTH ACT WAS PASSED, IMPLEMENTED AND DEFUNDED IN COLORADO IN A VERY SHORT PERIOD OF YEARS IN THE 1970'S. THE COLORADO OCCUPATIONAL SAFETY AND HEALTH STATUTE HAS NOT BEEN ENFORCED IN COLORADO SINCE IT WAS DEFUNDED. THIS ACT DID NOT SPECIFY FIELD SANITATION REGARDING AGRICULTURAL WORKERS, ALTHOUGH IT COULD BE CONSTRUED TO BE COVERED BY "PUBLIC WORKS" IN SECTION 8-11-106.

WITH REGARD TO THE DEPARTMENT OF HEALTH'S REGULATIONS ON LABOR CAMPS, THERE HAS BEEN NO ENFORCEMENT OF THESE REGULATIONS IN THE LAST TEN YEARS OR BETTER BECAUSE OF INABILITY TO FUND INSPECTION. FURTHERMORE, VERY FEW USERS OF AGRICULTURAL LABOR PROVIDE HOUSING WHICH COULD STRETCH TO AGRICULTURAL LAND "APPERTAINING THEREUNTO". THE STANDARDS REFERENCED BY THE U.S. DEPARTMENT OF LABOR WHEN INDICATING THAT COLORADO DOES HAVE FIELD SANITATION STANDARDS ARE TITLED SANITARY STANDARDS AND REGULATIONS FOR LABOR CAMPS (ATTACHED). THIS SEVENTEEN PAGE DOCUMENT CONTAINS FIVE SENTENCES (SECTIONS 4.5, 5.3) THAT SPEAK TO FIELD WORK CONDITIONS. THESE SENTENCES SPEAK TO, AND ARE LIMITED TO, FIELD WORK SITES "APPERTAINING" TO LABOR CAMPS (SECTION 2.1). A VERY SMALL MINORITY OF AGRICULTURAL WORKERS IN COLORADO WORK IN FIELDS "APPERTAINING" TO LABOR CAMPS OR OTHER "TEMPORARY LIVING QUARTERS". THIS ISSUE WAS DISCUSSED EXTENSIVELY WITH

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THE OSHA FIELD SANITATION TEAM PRIOR TO AND AFTER MR. STOUT'S SELECTION AS ONE OF OSHA'S FIVE EXPERT WITNESSES TO LEAD OFF TESTIMONY DURING THE 1984 FIELD SANITATION HEARINGS.

ACCORDING TO THE COLORADO DEPARTMENT OF LABOR AND EMPLOYMENT, THE SANITATION STANDARDS AND REGULATIONS FOR LABOR CAMPS IS THE PRIMARY REFERENCE STANDARD CURRENTLY AVAILABLE WHEN REQUESTING THAT AGRICULTURAL EMPLOYERS WHO USE THEIR SERVICES PROVIDE SANITATION AMENITIES. HOWEVER, THIS REQUEST IS MADE ONLY WHEN EITHER CREW LEADERS OR GROWERS INDICATE THAT HOUSING WILL BE PROVIDED. ADDITIONALLY, THE DEPARTMENT OF LABOR AND EMPLOYMENT MAY USE A SET OF FEDERAL HOUSING STANDARDS WHEN PLACING INTERSTATE AND INTRASTATE WORKERS IN WORK SITES WHERE HOUSING IS PROVIDED. IN BOTH INSTANCES, REGULATION IS TIED TO HOUSING AND NO PROVISION IS MADE FOR "LOCAL HIRE" (E.G., SEASONAL FARMWORKERS OR WORKERS WHO ARE REQUESTING WORK BUT DO NOT CONCURRENTLY REQUEST HOUSING ASSISTANCE). HOWEVER, AS OUR DEPARTMENT OF LABOR AND EMPLOYMENT WILL ACKNOWLEDGE, ONLY A VERY SMALL MINORITY OF FARMWORKERS SEEKS OR FINDS FIELD WORK EMPLOYMENT THROUGH THEIR OFFICES. THE OVERWHELMING MAJORITY OF CREW LEADERS AND INDIVIDUAL WORKERS BYPASS STATE SPONSORED PLACEMENT OPPORTUNITIES. EVEN IN THOSE LIMITED INSTANCES WHERE THE COLORADO DEPARTMENT OF LABOR AND EMPLOYMENT IS INVOLVED, NO PROVISION IS CURRENTLY AVAILABLE FOR INSPECTION OR MONITORING ACTIVITIES.

WE HOPE THIS INFORMATION WILL CLARIFY THE QUESTIONS RAISED IN YOUR LETTER OF NOVEMBER 20, 1985.

YOURS VERY TRULY,

DANIEL J. GOSSERT, ACSW, M.P.H.
DIRECTOR,
FAMILY HEALTH SERVICES DIVISION

Charles L Stout

CHARLES STOUT, M.P.H.
DIRECTOR,
MIGRANT HEALTH PROGRAM

BN
ENCLOSURES: DRAFT BILL ON FIELD SANITATION
ASSESSMENT OF FIELD SANITATION PRACTICES IN COLORADO, 1985
SANITARY STANDARDS AND REGULATIONS FOR LABOR CAMPS
COLORADO STATUTE (8-11-101 THROUGH 123), COLORADO
OCCUPATIONAL SAFETY AND HEALTH ACT

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COLORADO DEPARTMENT OF HEALTH
Richard D. Lamm
Governor
Thomas M. Vernon, M.D.
Executive Director

AN ASSESSMENT OF
FIELD SANITATION PRACTICES IN COLORADO
- 1985 -

INTRODUCTION

FOR MORE THAN TWENTY YEARS, THE LACK OF COMPLIANCE WITH BASIC FIELD SANITATION IN AGRICULTURAL FIELD WORK SITES HAS BEEN OF MAJOR CONCERN TO PUBLIC HEALTH AGENCIES. SINCE 1972, THE ISSUE HAS BEEN UNDER STUDY BY THE OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION, U.S. DEPARTMENT OF LABOR.

BASIC FIELD SANITATION STANDARDS INCLUDE THE FOLLOWING THREE MEASURES:

1) TOILETS TO CONTROL THE DISPOSAL OF HUMAN WASTE. APPROPRIATE TOILET FACILITIES WOULD, AT MINIMUM: A) PROVIDE FOR PRIVACY DOORS WITH INSIDE LOCKS, B) PREVENT HUMAN EXCRETA FROM CONTAMINATING THE FOOD CROP, C) KEEP FLIES AWAY FROM THE EXCRETA, D) HAVE SUFFICIENT TOILET PAPER AVAILABLE, AND E) BE MAINTAINED IN A CLEAN AND SANITARY CONDITION.

2) SAFE, CLEAN, DRINKING WATER. APPROPRIATE DRINKING WATER WOULD, AT MINIMUM: A) BE OBTAINED FROM A PUBLIC WATER SUPPLY OR ANOTHER SOURCE THAT MEETS STATE OR COUNTY STANDARDS, B) BE DISPENSED FROM COVERED CONTAINERS IN SINGLE USE PAPER DRINKING CUPS OR BY SANITARY DRINKING FOUNTAINS, C) BE IN SUFFICIENT QUANTITY RELATIVE TO THE NUMBER OF WORKERS, D) BE COOLED.

3) CLEAN WATER FOR HANDWASHING TO REMOVE HARMFUL BACTERIA AND AGRICULTURAL CHEMICALS. APPROPRIATE HANDWASHING CAPABILITY WOULD, AT MINIMUM: A) BE IN SUFFICIENT QUANTITY RELATIVE TO THE NUMBER OF WORKERS, B) PROVIDE SOAP FROM A DISPENSER (LIQUID OR POWDER), C) PROVIDE SINGLE-USE TOWELS, D) PROVIDE FOR DISPOSAL OF USED WASH WATER IN A MANNER WHICH WOULD NOT CONTAMINATE THE CROPS.

THE PROBLEMS WHICH OCCUR IN THE ABSENCE OF APPROPRIATE FIELD SANITATION MEASURES ARE THE FOLLOWING:

A. THREATS TO WORKER HEALTH

1) TRANSMISSION OF FECAL-BORNE BACTERIAL, VIRAL AND PARASITIC

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DISEASE CONDITIONS, (E.G., DYSENTARY, INFANT DIARRHEA, SHIGELLOSIS, HEPATITIS, GIARDIASIS) - - THESE OCCUR BECAUSE OF THE LACK OF CONTROL OF HUMAN WASTES IN THE FIELDS AND THE LACK OF HANDWASHING CAPABILITIES.

MIGRANT FARMWORKERS HAVE AN 11-59 TIMES GREATER CHANCE OF DEVELOPING THESE CONDITIONS THAN THE GENERAL POPULATION.[1]

2) URINARY TRACT INFECTIONS AND HEAT STRESS - - THESE OCCUR BECAUSE OF LACK OF TOILETS FOR REGULAR URINATION AND INGESTION OF LESS THAN ADEQUATE AMOUNTS OF WATER TO REDUCE THE NEED TO URINATE.

MIGRANT FARMWORKERS HAVE A 3.5 TIMES GREATER CHANCE OF DEVELOPING THIS CONDITION THAN THE GENERAL POPULATION. *(ibid)*

3) PESTICIDE POISONING FROM DERMAL EXPOSURE (BOTH HANDS AND GENITAL AREAS) - - THIS OCCURS BECAUSE OF LACK OF HANDWASHING FACILITIES AND LACK OF APPROPRIATE TOILET FACILITIES.

MIGRANT FARMWORKERS HAVE A 3-24 TIMES GREATER CHANCE OF DEVELOPING THIS CONDITION THAN THE GENERAL POPULATION. *(ibid)*

B. THREATS TO COMMUNITY HEALTH

1) TRANSMISSION OF FECAL BORNE DISEASE OCCURS WHEN HUMAN WASTES COME IN CONTACT WITH WATER SUPPLIES, SUCH AS IRRIGATION CANALS AND STREAMS, OR THROUGH DISEASE-CARRYING INSECTS AND RODENTS DUE TO LACK OF TOILETS IN THE FIELDS.

2) VEGETABLE AND FRUIT CONTAMINATION BY PARASITIC WORMS AND PATHOGENIC MICROORGANISMS OCCURS WHEN FOOD IS PICKED, WRAPPED AND CRATED IN THE FIELDS - - CAUSED BY LACK OF CONTROL OF HUMAN WASTE AND LACK OF HANDWASHING FACILITIES.

C. THREATS TO HUMAN DIGNITY

EVERY CULTURE PLACES A HIGH VALUE ON MODESTY. IT IS COMMON IN COLORADO TO SEE FARMWORKER CREWS OF 40 TO 60 MEN, WOMEN AND CHILDREN TOGETHER IN A SINGLE FIELD. WITHOUT PRIVATE TOILET FACILITIES, THESE WORKERS MUST DEFECATE, URINATE AND DISPOSE OF WASTES (INCLUDING MENSTRUAL SUPPLIES) IN PUBLIC.

THE RIGHT TO PRIVATE TOILET FACILITIES PROTECTS THE DIGNITY OF THE FARMWORKERS AS WELL AS THE DIGNITY OF THE OWNERS OF THE PRIVATE HOMES SURROUNDING AND LOOKING OUT OVER COLORADO'S AGRICULTURAL FIELDS.

IN EARLY 1983, THE COLORADO MIGRANT AND RURAL COALITION - - A STATEWIDE

[1] ORTIZ, JESSE S., DR. P.H., COMPOSITE SUMMARY AND ANALYSIS OF HEARING HELD BY THE DEPARTMENT OF LABOR, OCCUPATIONAL HEALTH AND SAFETY ADMINISTRATION ON FIELD SANITATION FOR MIGRANT FARMWORKERS (DOCKET NO. H308), MAY 23, 1984 - JUNE 29, 1984.

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COALITION OF ORGANIZATIONS AND INDIVIDUALS CONCERNED WITH THE SOCIAL AND ECONOMIC BETTERMENT OF THE MIGRANT AND RURAL LOW-INCOME POPULATION - - TARGETED THE CONTINUING PROBLEM OF INADEQUATE FIELD SANITATION PRACTICES AS AN ISSUE TO BRING BEFORE THE 1984 LEGISLATIVE SESSION. THE LEGISLATIVE PROPOSAL CALLED FOR THE PROVISION OF TOILETS, DRINKING WATER AND HAND-WASHING CAPABILITIES, WITH A ONE YEAR GRACE PERIOD FOR EDUCATION AND DEVELOPMENT OF FACILITIES BY FARM OWNERS. THE BILL WAS VOTED DOWN IN COMMITTEE.

BECAUSE THE BILL WAS KILLED IN COMMITTEE, 21 OF THE 24 MEMBERS OF THE LEGISLATURE'S WOMEN'S CAUCUS SPONSORED A JOINT RESOLUTION (HJR 1020) STATING THAT IT WAS EXPECTED THAT EMPLOYERS OF FARMWORKERS WOULD PROVIDE TOILETS, DRINKING WATER, AND HANDWASHING FACILITIES. THE RESOLUTION WAS PASSED IN APRIL, 1984, WITH THE HANDWASHING CLAUSE REMOVED.

CONSIDERABLE DISCUSSION IN OPPOSITION TO BOTH THE PROPOSED BILL AND THE JOINT RESOLUTION CENTERED AROUND THE NUMBERS OF GROWERS IN COLORADO WHO ALREADY PROVIDED THE REQUESTED AMENITIES. IN 1983, IT WAS ESTIMATED THAT APPROXIMATELY 30% OF GROWERS PROVIDED TOILETS, 15% PROVIDED DRINKING WATER AND NONE PROVIDED HANDWASHING FACILITIES. OPPONENTS OF THE MEASURES SUGGESTED THAT MOST AGRICULTURAL PRODUCERS WERE ALREADY IN COMPLIANCE.

IN ORDER TO DEVELOP AN ACCURATE PICTURE OF THE NUMBER OF GROWERS WHO PROVIDED FOR THE SANITATION NEEDS OF THEIR WORKERS, THE MIGRANT HEALTH SECTION OF THE COLORADO DEPARTMENT OF HEALTH REQUESTED AND SECURED OUTSIDE FINANCIAL ASSISTANCE TO SURVEY FIELD SANITATION PRACTICES DURING THE SUMMER OF 1985. THE FOLLOWING SECTIONS DETAIL THE METHODOLOGY FOLLOWED AND THE FINDINGS OF THIS SURVEY.

METHODOLOGY

THE TWO MOST LABOR INTENSIVE AGRICULTURAL AREAS IN COLORADO WERE CHOSEN FOR THE SURVEY - - NORTH CENTRAL COLORADO AND THE ARKANSAS/SAN LUIS VALLEYS. SEVEN COUNTIES WERE ASSESSED, INCLUDING WELD, BOULDER, ADAMS, PROWERS, OTERO, PUEBLO AND COSTILLA (ONE FIELD IN RIO GRANDE AND ONE FIELD IN SAGUACHE WERE ASSESSED AND INCLUDED IN THE COSTILLA COUNTY ASSESSMENT TABULATIONS). TWO PEOPLE FAMILIAR WITH THE MIGRANT FARMWORKER LIFESTYLE AND CULTURE WERE BILINGUAL, AND HAD EXCELLENT REFERENCES FROM RECENT EMPLOYERS AND COWORKERS.

THE ASSESSOR TRAINING AND ORIENTATION SESSION TOOK PLACE JUNE 3-21, 1985. THE STATE CONSUMER PROTECTION STAFF PROVIDED TRAINING IN THE USE OF THE DATA COLLECTION INSTRUMENTS (FORMS, INTERVIEW STYLES, PHOTOGRAPHIC EQUIP-MENT). ORIENTATION BY LOCAL MIGRANT-SERVING STAFF WAS PROVIDED IN EACH AREA TO BE ASSESSED. EACH ASSESSOR WAS ASSIGNED TO A SPECIFIC REGION IN THE STATE - - ONE IN THE NORTH CENTRAL AREA AND ONE IN THE ARKANSAS/SAN LUIS VALLEYS. MEASURES FOR CONFIDENTIALITY AND PROTECTION OF WORKERS' AND GROWERS' RIGHTS WERE ESTABLISHED DURING THE TRAINING AND ORIENTATION SESSION.

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ASSESSMENT ACTIVITIES WERE CONDUCTED JUNE 24 - SEPTEMBER 3, 1985. FIELD WORK SITES WERE VISITED DURING DAYTIME WORK HOURS TO DOCUMENT THE AVAILABILITY OF DRINKING WATER, HANDWASHING CAPABILITIES AND TOILET FACILITIES. FIELDS FOR ASSESSMENT WERE CHOSEN ON THE BASIS OF ACCESSIBILITY: FIELD WORKERS AND MIGRANT-SERVING STAFF GAVE REFERRALS WHEN THE ASSESSOR ASKED FOR FIELDS BEING WORKED THAT DAY, AND ASSESSORS STOPPED AT OTHER FIELDS BEING WORKED AS THEY SAW THEM FROM THE COUNTY ROADS. A TOTAL OF 171 FIELDS WERE ASSESSED. CROPS TENDED AND HARVESTED INCLUDED ONIONS, CUCUMBERS, CANTALOUPE, TOMATOES, SPINACH, WATERMELON, CHILE, SQUASH, CABBAGE, BEETS, POTATOES AND LETTUCE.

ASSESSMENT FORMS WERE COMPLETED FOR EACH SITE DENOTING SITE LOCATION, DATE, NUMBER AND GENDER OF WORKERS AND FIELD SANITATION OBSERVATIONS. PHOTOGRAPHS WERE TAKEN AT EACH SITE VISIT. THE ASSESSMENT FORMS WERE CODED FOR COMPUTER PROCESSING OF THE DATA, AND INCLUDED A PLACE FOR ADDITIONAL WRITTEN COMMENTS BY THE ASSESSORS (SEE ATTACHED FORM).

EXIT INTERVIEWS WITH THE ASSESSORS WERE CONDUCTED IN LATE SEPTEMBER/EARLY OCTOBER, 1985. THE PHOTOGRAPHS WERE CODED TO CORRELATE WITH THE ASSESSMENT FORMS, AND THE FORMS WERE SUBMITTED FOR DATA PROCESSING. THE INDIVIDUAL FORMS HAVE BEEN RETAINED FOR CONFIDENTIAL REVIEW BY LEGISLATORS, IF REQUESTED. ANECDOTES FROM THE FIELD WORKERS AND PERSONAL OBSERVATIONS FROM THE ASSESSORS HAVE ALSO BEEN DOCUMENTED.

FINDINGS

A TOTAL OF 171 FIELDS WERE ASSESSED DURING THE SUMMER MONTHS OF 1985. THE FOLLOWING TABLE DISPLAYS THE SIZE OF THE WORK FORCE IN THESE FIELDS:

TABLE 1
NUMBER OF WORKERS AND NUMBER OF FIELDS
ALL ASSESSED COUNTIES, 1985

NUMBER OF WORKERS	NUMBER OF FIELDS	PERCENTAGE
1 - 9	34	20%
10 - 30	90	52
31 - 60	20	12
61 - 90	10	6
90 - 150	12	7
151 - 242	5	3
TOTAL	171	100%

THE FOLLOWING STATEMENTS SUMMARIZE THE NUMBER OF WORKERS IN THE FIELDS ASSESSED:

- 80% (N=137) OF THE FIELDS ASSESSED HAD 10 OR MORE WORKERS PRESENT;

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- 52% (N=90) OF THE FIELDS HAD BETWEEN 10 AND 30 WORKERS PRESENT;
- 28% (N=47) OF THE FIELDS HAD MORE THAN 31 WORKERS PRESENT;
- 16% (N=27) OF THE FIELDS HAD MORE THAN 60 WORKERS PRESENT.

TABLE II DISPLAYS THE NUMBER OF FIELDS THAT OFFERED BASIC FIELD SANITATION FACILITIES AND WHETHER THOSE FACILITIES (WHEN AVAILABLE) MET THE STANDARDS NOTED ON PAGE 1.

TABLE II
NUMBER OF FIELDS WITH FACILITIES
BY ACCEPTABILITY OF FACILITIES, 1985

ACCEPTABILITY	TOILETS	DRINKING WATER	HAND-WASHING	ALL THREE
NOT PRESENT	135 (79%)	117 (68%)	168 (98%)	168 (98%)
PRESENT, BUT NOT ACCEPTABLE	9 (5%)	54 (32%)	1 (.6%)	3 (2%)
PRESENT AND ACCEPTABLE	27 (16%)	0	2 (1%)	0
TOTAL	171 (100%)	171 (100%)	171 (100%)	171 (100%)

OF THE 171 FIELDS ASSESSED, THERE WAS NOT ONE INSTANCE IN WHICH ALL THREE FACILITIES WERE PROVIDED IN AN ACCEPTABLE MANNER. WITH REGARD TO THE INDIVIDUAL AMENITIES, THE FOLLOWING SUMMARY STATEMENTS MAY BE OFFERED:

A. - TOILETS

- TOILETS WERE NOT AVAILABLE IN 79% (N=135) OF THE FIELDS;
- 16% (N=27) OF THE FIELDS HAD TOILETS AVAILABLE AND MAINTAINED IN ACCORDANCE WITH THE BASIC STANDARDS LISTED ON PAGE 1;
- 5% (N=9) OF THE FIELDS HAD TOILETS AVAILABLE, BUT THE CONDITION OF THE TOILETS MADE THEM UNSUITABLE FOR USE (E.G., NO DOOR, INADEQUATELY MAINTAINED, NO TOILET PAPER, A WOODEN FRAME OVER A SHALLOW HOLE).

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B. - DRINKING WATER

- THERE WAS NOT A SINGLE INSTANCE IN WHICH DRINKING WATER WAS PROVIDED IN AN ACCEPTABLE MANNER;

- DRINKING WATER WAS NOT AVAILABLE IN 68% (N=54) OF THE FIELDS, BUT WAS WORKER PROVIDED, WAS NOT COOLED, AND WAS IN INSUFFICIENT QUANTITY. ALL REQUIRED THE SHARING OF A COMMON DRINKING CONTAINER. THE MOST COMMON CONTAINER WAS A ONE-GALLON PLASTIC MILK BOTTLE.

C. - HANDWASHING CAPABILITY

- HANDWASHING CAPABILITY WAS NOT AVAILABLE IN 98% (N=168) OF THE FIELDS;

- 1% (N=2) OF THE FIELDS HAD HANDWASHING CAPABILITY AVAILABLE IN AN ACCEPTABLE MANNER (I.E., SUFFICIENT QUANTITY, LIQUID OR POWDERED SOAP, ADEQUATE DRAINAGE AWAY FROM CROPS).

WITH REGARD TO THE COMPOSITION OF THE AGRICULTURAL LABOR FORCE, TABLE III ON THE FOLLOWING PAGE DEPICTS THE NUMBER OF FIELDS ASSESSED IN EACH COUNTY, THE NUMBER OF FIELDS WITH MEN ONLY, THE NUMBER OF FIELDS WITH MEN AND WOMEN, AND THE NUMBER OF FIELDS WITH MEN AND WOMEN WORKERS AND CHILDREN PRESENT.

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TABLE III
NUMBER OF FIELDS AND COMPOSITION OF LABOR FORCE
ALL ASSESSED COUNTIES, 1985

COUNTY	MEN ONLY	MEN AND WOMEN	MEN, WOMEN CHILDREN PRESENT	TOTAL WORKERS TOTAL FIELDS
BOULDER	6	1	-	57 WORKERS 7 FIELDS
ADAMS	2	2	-	21 WORKERS 4 FIELDS
WELD	16	18	25	2692 WORKERS 59 FIELDS
PROWERS	1	2	-	44 WORKERS 3 FIELDS
OTERO	31	11	26	1858 WORKERS 68 FIELDS
PUEBLO	5	4	7	482 WORKERS 16 FIELDS
COSTILLA	3	5	6	825 WORKERS 14 FIELDS
TOTAL	64 (37%)	43 (25%)	64 (37%)	5979 WORKERS 171 FIELDS

NOTES FROM TABLE III:

1) ONE FIELD IN RIO GRANDE COUNTY AND ONE FIELD IN SAGUACHE COUNTY WAS INCLUDED IN THE COSTILLA COUNTY COUNT.

2) ALTHOUGH CHILDREN WERE COUNTED IN COLUMN 5 AS WORKERS, THIS STUDY STATES THEY WERE PRESENT, BUT NOT NECESSARILY WORKING.

AS IS READILY APPARENT, THE MAJORITY OF FIELD WORK SITES (62%; N=107) CONTAINS WOMEN OR WOMEN AND CHILDREN. ONLY 34% (N=64) OF THE FIELD WORK SITES ASSESSED HAVE MEN ONLY IN THE WORK FORCE.

CONCLUSIONS

EVIDENCE GAINED THROUGH THIS SURVEY OF 171 FIELD WORK SITES AND 5979 WORKERS INDICATES THAT COLORADO HAS A LONG WAY TO GO WITH REGARD TO ASSURING A SAFE WORKING ENVIRONMENT FOR THE AGRICULTURAL WORKERS WHO TEND AND HARVEST THE STATE'S FOOD CROPS. ONLY 16% (N=27) OF THE WORK SITES HAD APPROPRIATE TOILET FACILITIES, ONLY 1% (N=2) HAD APPROPRIATE HANDWASHING CAPABILITY, NONE PROVIDED APPROPRIATE DRINKING WATER. THERE WAS NOT A SINGLE INSTANCE IN WHICH ALL THREE AMENITIES WERE PROVIDED.

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Mr. FRANK. The gentleman from New York. And I thank the gentleman for yielding to me.

Mr. OWENS. I think that is quite clear, Mr. Secretary, that you believe in 2 years this problem is going to work itself out. Your general optimism is quite clear to me.

What is not clear to me is where we are right now. Could you clarify for me the statement that 13 States have already provided significant protections to 75 percent of the exposed population.

Are you saying that 75 percent of the exposed population for the entire Nation is now covered because of the actions of those 13 States?

Mr. BARODY. That's correct.

Mr. OWENS. Most of the workers work in those States?

Mr. BARODY. According to the data we have available, about 75 percent of the field hand workers in the Nation are in those States counted among the 13 which have standards. And so they enjoy a degree of protection.

Mr. OWENS. You say the 13 States have provided significant protections.

Can you make that a little more specific. When you say "significant protections," what do you mean? That is 50 percent of OSHA standards, or 75 percent?

Mr. BARODY. In fact, several of those States—the opinion is widely held that several of those States have requirements more strict than would have been imposed by the Federal standard.

But, by significant protections, we have reference to the criteria laid out in the Federal Register notice of October 21. And they regulate in most, if not all of the three required areas. That is hand washing facilities, potable water and toilet facilities.

There are 2 of those 13 which do not require toilet facilities, as an example of the variance from that. But, by and large, taken as a whole, they provide significant protection.

Mr. OWENS. You said significant protection. And before that you said they go beyond the standards.

Mr. BARODY. I said in the view of some, some of those States in fact, go beyond by the requirements they impose in their standards.

Mr. OWENS. So this whole concern is a tempest in a teapot, there is really no problem.

Mr. BARODY. I really don't suggest that for a moment, and neither does the Secretary. That is why he has called for additional action.

Mr. OWENS. What are the impediments? Is there a great deal of money required to implement the OSHA standards, Federal standards?

Why are we so reluctant to move? Just ideology and philosophy? States' rights concerns? Or, is it really, it would be a tremendous burden on the Department?

Mr. BARODY. The burden on the Department has not been the inhibiting factor, as I understand it. And the cost imposed on the industry has been variously estimated up to as much as $25 million, I think. But that is not considered substantial. I think instead, it is the complicated nature of the issue and the fact that it is as much a public health issue, at least, as it is an occupational health

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issue that has created the contentiousness and the long history of litigation on this issue.

Mr. OWENS. Thank you very much.

No further questions.

Mr. FRANK. Thank you, Mr. Owens.

Mr. Baroody, Mr. Tyson, thank you very much. Again I apologize for having delayed you earlier. We appreciate your coming.

We will have some further correspondence on these issues. We will be asking you for the proposed work plan in general for monitoring enforcement. And then we will try to clarify Colorado, or any other evidence you have, we will take.

Our last panel is Mr. Rudy Salinas, who is a migrant worker from Florida; Dr. Louise Weidner from the University of Utah, and Charles Horwitz, Migrant Legal Action Program.

Let me apologize to the panelists for this delay. I am sorry, and I appreciate your willingness to be here.

Dr. Weidner, I apologize for preempting your testimony a little bit, but it was very relevant, and I appreciate it.

Mr. Horwitz, why don't you begin?

STATEMENT OF CHARLES HORWITZ, MIGRANT LEGAL ACTION PROGRAM

Mr. HORWITZ. Thank you, Mr. Frank, members of the committee.

Secretary of Labor William Brock's decision to delay a standard for 18 months might seem to be reasonable, if it were not for this 13-year old history of this case.

The Secretary's Federal Register notice, quote, supersedes previous notices of April 16, no Federal standard will be issued because, quote, a different balance must be struck in order to give proper weight to the health risks posed.

However, in our view, this new balancing act is nothing more than another delaying tactic to maintain the status quo. The Notice fails to specify how many States, 1, 2, 3, 37 must fail so as to trigger Federal action.

It is possible, under the Secretary's Notice, that two States could pass laws, and that would cover, quote, the vast majority of farmworkers in this country, and that would mean 15 States would have standards and 35 wouldn't, and that would satisfy his Federal Register notice.

The Secretary's commitment to a Federal standard in 24 months, if some unspecified number of States fail to act, could be, quote, superseded whenever he decides that another new, or quote, different balance must be struck.

Since at least 1978, three Secretaries of Labor have made similar promises to pass a standard, which were superseded for a variety of reasons. Everybody says Mr. Brock is a nice guy. The other Secretaries were nice guys, too. They happened to change their minds, and they found many, many reasons to do that.

For example, in 1978, the Secretary promised a standard for farmworkers within 18 months. It was withdrawn. A new standard was offered in 1979. It was withdrawn. In 1980, the Secretary promised a standard within 47 months. It was withdrawn. In 1981, the Secretary promised a standard within 58 to 64 months. It was with-

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drawn. In 1982, the Secretary promised a standard within 31 months. It was once again withdrawn. Despite an enormous record which showed without any medical or public health dissent, that the standard was necessary. And even the Secretary's two consultants he hired to look at the 13-year-old record of the case made that point.

In 1981, a Federal court judge in the U.S. District Court for the District of Columbus condemned the Department of Labor's actions saying:

> Clearly, OSHA's timetables belong in Alice in Wonderland's tales. Each step forward brings us two steps backward. That these timetables have not been given in good faith, nor decisions made in rational measure is apparent from the testimony at trial.

Why has the Labor Department promised and then reneged on promulgating such a simple sanitation standard? The list of excuses is almost as long as the history of this case. Just last month, the Secretary cited to the court, "severe limitations on OSHA's resources and OSHA's other priorities" as a reason to delay adoption of a standard.

DOL officials have offered the lack of resources as an excuse for delay four times prior to 1985; once in 1977, twice in 1978, once in 1979.

Further, new priorities have been cited as an excuse for delay no less than four times prior to 1985, once in 1977, three times in 1978, once in 1981.

In 1979, the lack of experience of DOL staff was offered as an excuse for delay. There was some turnaround in staff and the lack of experience was cited.

In 1978 and 1981, the hiring of new staff was said to necessitate further delay. Whenever there is a new Secretary for OSHA there is a need for more delay and more review on this standard.

In 1985, DOL cited loss of experienced staff as another reason for delay.

In 1984, DOL officials first stated that internal review of analyses and comments submitted by the public required delay. Then asserted that the OMB review of DOL proposals necessitated further delay.

One would think the issue before DOL was whether or not to develop a new star wars strategy, not whether or not to require an employer to provide their workers cool drinking water under the hot sun.

Secretary of Labor Brock's latest rationale for delaying a decision is unique. No other Labor Secretary thought to make the issuance of a standard dependent on States' actions.

The OSHA Act was never intended to be administered in this manner. And the Secretary's states' rights approach is totally contradictory to the purposes of the OSHA Act, which other witnesses have said and have discussed.

This standard is a perfect example of the necessity for a Federal regulation. Only 13 States have any kind of regulation. And even if all 13 States' standards offered as much protection as the Federal standard, which they do not—and we mentioned many States having inadequate standards—we didn't mention Maine, by the way, which only covers blueberry workers——

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Mr. FRANK. Was that 1 of the 13?

Mr. HORWITZ. That's 1 of the 13, yes, sir.

The thousands of farmworkers employed in the 37 States which lack standards, would go unprotected. Moreover, even if there were 100 percent compliance by agricultural employers in the 13 States with State standards—this is a crucial fact that has not been mentioned—many farmworkers travel out of those States to work for several months each year and are unprotected during these periods.

For example, a Florida-based farmworker who migrates from Florida—Mr. Salinas, for example, will testify shortly about this—who works on the Eastern Seaboard, would not find sanitation laws in Georgia, South Carolina, Virginia, West Virginia, Delaware, Maryland, Rhode Island, Vermont, Massachusetts, and New Hampshire.

Florida farmworkers often work in their home State for half the year, then migrate north to work for the remainder of the year. So, when Mr. Baroody talks about 75 percent of the workers covered already under State laws, it is very misleading and very deceptive because when the Florida farmworkers migrate out of the State, Texas farmworkers migrate out of the State—they go to 30 different States, for example, from Texas—half the time they are not covered by State laws. So, to say 75 percent are covered, is misleading.

The State's right argument now offered by DOL, carried to its logical conclusion, would have prevented the adoption of virtually all Federal OSHA standards, since there are widely varying conditions in every industry which could be addressed by the several States.

The State's right argument DOL now advances does not prevent it from adopting, for example, standards requiring sanitary facilities in virtually all types of nonagricultural workplaces.

It is difficult to imagine a situation in which nationwide regulation is more compelling than the field sanitation standard, where the working population moves from State to State and can carry with it the infectious and parasitic diseases that the standard was intended to prevent.

The overwhelming weight of the evidence presented at the 1984 hearing is contrary to what Mr. Tyson said. He said the hearings and the record did not get into the enforcement question. I was at all five of those hearings, and that is the main thing they got into. Farmworker after farmworker, medical doctor after medical doctor, State official after State official admitted that there was lack of enforcement. It was a low priority.

The hearings demonstrated that fewer than 20 percent of the agricultural employers in this country provided toilets, drinking water, and hand washing facilities.

For example, the evidence in the record showed that in Texas, inspectors refused to cite growers in violation of the sanitation law; even when one of the best attorneys for Texas Rural Aid who accompanied this worker in the fields and saw that there were no standards there, complained, no citation was issued.

In one county, the district attorney who was supposed to enforce these laws, belonged to the same private law firm that represented

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Griffin and Brand, one of the Nation's largest growers. Lack of personnel and funds hampers State enforcement efforts in all of the 13 States.

State officials admit that the enforcement of field sanitation laws is a low priority. A Tulare County, CA health official said it was one step above, quote, canine sanitation.

In Florida, experts admitted that the growers rent, quote, alibi potties, to escape being cited by health department officials.

The Secretary also failed to acknowledge in his Federal Register notice that in at least 10 of the 13 States, the standards are significantly defective compared to the Federal standard. He does not explain why farmworkers, of all workers in this country, should be denied the right to basic field sanitation standards only if the States failed to act.

Evidently, the Department of Labor until now understood and respected the limitations on its authority. In the 15 years since OSHA was passed, this appears to be the only time DOL has attempted to turn over to State legislatures, the decision of whether or not there will be health and safety standard minimums for American workers.

Finally, it should be noted that benefits to workers and their employers from field sanitation standards would clearly outweigh the cost of 73 cents per worker per day. That is what the OSHA Centaur study showed. Centaur was paid a half million dollars to do a study for OSHA to determine how much this cost would be for agricultural employers. They said $14 million a year for the agricultural industry, which is an industry of $260.1 billion per year, according to the USDA in 1980. We are talking about 73 cents per worker per day. And to say that this is a significant cost on labor is ridiculous. It was admitted by agricultural employers that it amounts to less than 1 to 2 percent of labor costs per employer per day.

Based on likely reductions of infectious diseases alone—just on infectious diseases, and we have a host of diseases and problems that farmworkers have—promulgation of this rule would likely increase workers' productivity according to experts, between $79 and $120 million yearly, according to a witness from the Harvard School of Public Health.

Other experts believe that similar increases in worker productivity alone would be likely, based on reductions of urinary tract infections, pesticide poisonings and heat stress. Evidence from coroners' reports in California during the hearings in 1984 showed that two farmworkers died 1 month before the hearings, of heat stress, caused by the lack of water and the dry heat in California.

For all of these reasons, I urge the subcommittee to take the necessary steps to ensure that a field sanitation standard is enacted into law as soon as possible.

I would like to add into the record a recent statement by Dr. Jessie Ortiz from the University of Massachusetts, who was one of the two OSHA experts who said that there was a compelling need for the standard.

I also like to submit for the record a pile of documents from OSHA over the past several years with their promises which were broken and then excuses which were made for the delays.

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And further, I would like to submit for the record a news report from the National Governors' Association, which was very critical of this passing the buck to the States by avoiding—by the Federal Government avoiding their responsibilities.

Mr. FRANK. Thank you, Mr. Horwitz. Without objection, we will take those documents. We may winnow down some of that pile.

[Two of the documents referred to follow; the remainder are in the subcommittee files.]

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STATEMENT IN FAVOR OF PROMULGATION OF FIELD SANITATION STANDARDS FOR MIGRANT FARM WORKERS

Ladies and Gentlemen:

Allow me to introduce myself. My name is Jesse Ortiz. I am currently an associate professor of Environmental Health at the University of Massachusetts in Amherst, where I teach courses in sanitation and environmental health including the health effects of fecal pollution, hazardous waste disposal and pesticide poisoning.

I favor the promulgation of the field sanitation standards, and I do so with some scientific authority. First, I have extensively published research on infectious diseases and specifically on migrant workers. I was also one of the expert witnesses for OSHA in 1984 when they conducted their field sanitation hearings, and I was one of two experts hired by OSHA to summarize and analyze the data gathered during the hearings.

I also have knowledge of working conditions on the farms, since I spent the summer of 1952 working as a migrant laborer in New Jersey and have since visited many farms in connection with my research.

I support the promulgation of the field sanitation standards for the following reasons: Agricultural work is dangerous, ranking along with coal mining and construction as the most hazardous occupations in the country. A high rate of acute and chronic disease persists in farm workers. For example, Blair and Thomas (1979) have just shown farmworkers to have the highest leukemia mortality of all occupational groups. Fuentes (1974) conducted a 6-month study of 160,000 migrant workers in California. Chronic conditions such as malnutrition, dental problems, upper respiratory illnesses, skin ailments, unspecified chronic diseases and inadequate

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perinatal care were ranked by farmworkers as primary health concerns. Often, ocupational diseases go unrecognized, due to the lack of physician and worker awareness, and disincentives towards reporting directed to employers. For example Kahn (1976) estimated that only 1-2% of all pesticide-related illness is tabulated in California, despite a mandatory reporting law. He cites evidence that the vast majority of such illnesses are chronic, poorly correlated with cholinesterase levels and misdiagnosed or attributed to other etiology.

Of all farmworkers, migrant workers appear to be the most likely to develop certain occupational diseases. These workers are often the least informed with regard to available health care and sanitation facilities, right-to-know and occupational health laws and job hazards. Their extremely long hours, usually at a single task in the fields, allows high levels of exposure to pesticides, heat, poor sanitation, dehydration, etc. They are least likely to protest, to know about proper precautions, or to become actively involved in evaluation and improvement of working conditions. In addition, the poor nutritional status of farmworkers has been shown to exacerbate acute and pesticide-related illness.

Acute intestinal diseases are alarmingly high amongst this population as it was shown by the 87th Congress of the U.S. in hearings before the Subcommittee on Labor and Public Welfare in 1962 (1963). They gathered a voluminous amount of data regarding sanitary and health conditions of the migrant worker. Among the works cited was that of Watts et al. (1963) who studied the prevalence of shigella and salmonella in labor camps and compared it to the prevalence in an urban poor population. He found a shigella prevalence rate of 6.1% for labor camps versus 0.4% for urban

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poor.

In 1950, it was shown in studies by Drake and Long (1950) on farm labor camps in the San Joaquin Valley that the lack of sanitary facilities created three public health problems among the farmworkers:

1 - Risk of disease to themselves; the relatively high incidence of illness and absenteeism was due to diarrheal illness among the field crop workers.

2 - A risk to the entire community due to fecal material deposited on the ground.

3 - The threat of food contamination with human excreta.

Futner, Hollister et al. (1955) reported that farm labor families living in cabins without plumbing and outdoor facilities had a three times higher prevalence of shigellosis when compared with families who had water readily available in their cabins. Similarly, OSHA collected data on migrant health during the hearings on field sanitation in May-June 1984. Diseases related to poor sanitation and thus contracted by migrant workers included typhoid fever, shigellosis, salmonellosis, camphylobacter jejunei infections, E. coli enterotoxicosis, viral diarrhea, hepatitis A, amebic dysentery, giardiasis and helminthiasis. I was asked by OSHA to summarize and analyze the data from these hearings (1984). My conclusions were that the increased risks of migrant workers contracting an infectious disease (compared with the rest of the farmworking population) are:

Parasitic infection - 20x

Gastrointestinal diseases - 11x

Viral hepatitis - 331x

Urinary tract infections - 3.5x

Skin conditions - 3.75x

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Pesticide-related illness - 25x

Heat-related illness - 4.11x

Studies by Olsen and Weidner (1984) on migrant workers in Utah and compared their health problems to an urban poor population; the incidence of diarrhea, abdominal pain and gastrointestinal disorders in migrants was at least three times that in the urban population. Ironically, 34 years after Drake's work was published, we discovered the wheel again, and the 1984 OSHA hearings concluded that the lack of sanitary facilities created three public health problems among the farmworkers:

1 - Risk of disease to themselves; the relatively high incidence of illness and absenteeism was due to diarrheal illness among the field crop workers.

2 - A risk to the entire community due to fecal material deposited on the ground.

3 - The threat of food contamination with human excreta.

Although farmowners have traditionally given little attention to migrants' health care, the well-being of these workers is of major economic importance. Migrant workers are usually employed for harvesting and packing, activities which often must be done rapidly and carefully to prevent crop losses. As Desai (19) and others have shown, workers who are suffering from pesticide-related illness, diarrhea due to poor sanitation, or untreated medical illnesses are not able to work to full capacity. It is, therefore, imperative that the Department of Labor pass a field sanitation standard, not only to protect the migrant, but the health of the general public.

Sincerely,

Jesse S. Ortiz

Jesse S. Ortiz, Dr.P.H.
Associate Professor,
Environmental Health

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GOVERNORS' WEEKLY BULLETIN

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Mandating AFDC for Unemployed Parents May Cost $174 Million in 1987

A House Ways and Means Committee reconciliation bill, H.R. 3128, would mandate that all states provide coverage to unemployed parents under the Aid to Families with Dependent Children program by 1987.

If enacted, this could cost an additional $174 million the first year, according to an estimate by Federal Funds Information for States, a computerized data base operated by NGA and the National Conference of State Legislatures. About two-fifths of the cost would be borne by states and the balance by the federal government.

Under current law, states are given the option of providing AFDC cash grants to two-parent families where the primary wage-earner has become unemployed. About half the states take advantage of the option, with the number changing each year as states go on or off the program.

During the 1970s, the AFDC program for unemployed parents served a monthly average of 120,000 families. Participation has risen from a monthly average of 209,000 families in 1981 to 288,000 families in 1984. Participation in AFDC also makes these families categorically eligible for Medicaid benefits.

States that presently operate the program tend to be large and industrialized. Indeed, three-fourths of the spending for this program is in California, Michigan, New York, Ohio and Wisconsin. Twenty of 24 states in the New England, Midwest and Great Lakes regions expect to operate the program in 1987. By comparison, only one state in the Southwest and Southeast, West Virginia, plans to provide benefits for unemployed parents that year. Some states actively promote the grants in an effort to keep families intact or encourage participation in workfare. West Virginia, with the nation's highest unemployment rate, spends over one-third of its AFDC money on unemployed parents, compared to a national average of 10 percent.

Montana, new in the program, expects to spend only 1 percent of its 1985 AFDC costs on unemployed parents.

The FFIS has projected the cost of the program for individual states. The totals range from $5.5 million in Texas, where the federal government pays 53 percent of the cost, to $284,000 in Nevada, where the federal government pays half the cost.

For more information, contact Vic Miller, FFIS (202) 624-5849. ■

C-Span Reaches 49 State Capitals

After January 1986, cable television viewers in Pierre, S.D., will be able to watch when Gov. William J. Janklow testifies before Congress. They'll see him participate in meetings of the National Governors' Association, and may occasionally be able to speak with him personally via telephone connections courtesy of C-SPAN, the Washington, D.C.-based network that, until recently, spent most of its time covering Congress.

Pierre viewers will join voters in 49 state capitals and the District of Columbia, who monitor political leaders' activities via their televisions. Only the citizenry of Augusta, Maine, are deprived of this service, and officials at C-SPAN are working hard to correct the deficiency.

The nationwide campaign to add viewers began two years ago. The system already had 33 state capital affiliates. Since then it has also added Sacramento, Calif.; Denver, Colo.; Tallahassee, Fla.; Topeka, Kan.; Frankfort, Ky.; Boston, Mass.; St. Paul, Minn.; Jefferson City, Mo.; Helena, Mont.; Lincoln, Neb.; Concord, N.H.; Bismarck, N.D.; Carson City, Nev.; Montpelier, Vt.; and Olympia, Wash.

Thanks to purchase of a portable satellite uplink in 1984, C-SPAN has also been able to expand its programming beyond Capitol Hill. It visited 25 cities during the presidential elections that year.

Recently, coverage has focused on the theme States of the Nation '85. After traveling to Boise, Idaho, for live coverage of NGA's annual meeting in August, where crews conducted viewer call-in programs with 17 governors, C-SPAN launched a tour that included state capitals in Alabama, Arizona, California, Indiana, North Carolina, Missouri, Tennessee, Utah, Virginia and Wyoming. ■

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- Annual gains in basic skill scores have increased at a rate three to five times greater than earlier gains.
- Annual academic skill scores have increased at a rate five to 10 times greater than earlier gains.
- Writing skills have improved dramatically.
- Student absenteeism has dropped an average of three days per student per year.
- Truancy has dropped 30 percent.

Other states and local school districts are considering, or have adopted, this multifaceted approach. These experiences will help guide the Task Force on Readiness for the New Standards.

State policy issues, which influence these activities, generally fall into two categories and will be studied by our task force.

First, we will look at improving readiness for entering school. If states invest in early childhood education programs, what priorities should be established? If states choose to invest in early childhood education, what key components should be considered necessary? What is the state role in maintaining standards? Should certain standards be set locally, others by professions, and others by the states? How can states best respond to those who need both supervision, such as day care, and education for their preschool children? How can state policy encourage and help parents, relatives and community groups address the developmental needs of their preschool children?

Second, how can states formulate policies that help students stay ready for the new standards? What changes in schools, curricula, instructional approaches or practices should be included in state policy to help at-risk students meet the new standards? If states choose to invest in extra assistance through remedial or compensatory programs, what priorities should be established? If states choose to invest in remedial and compensatory programs, what key components should be considered for inclusion? How can state policy encourage parents, relatives and community groups to help children meet new standards?

Based on these policy questions, our task force will make recommendations that we hope states will find useful during the next five years. ■

For the Record

Field Sanitation: Another Example of Federalism at Work

Fernando Alcaraz

Farmworker advocates have been petitioning the U.S. Occupational Safety and Health Administration for 14 years to issue a standard for agricultural workers in the field. They ask for potable drinking water, handwashing facilities and toilets. The petition says that lack of adequate facilities spreads communicable diseases and causes other health problems.

Since 1970, the department has been issuing proposals, receiving comments and even entering into lengthy litigation regarding these seemingly innocent requests, based on recommendations originally made by an agricultural advisory committee and existing standards in California and New Jersey. Since then, 11 other states have developed their own standards.

Specifically, toilet and handwashing facilities were to be made available to employees in a ratio of one facility for every 40 workers and to be located within a five minute walk.

Now, U.S. Secretary of Labor William E. Brock has given the remaining states 18 months to do what the federal government hasn't been able to do in 13 years. On Sept. 11, he announced that the federal government would issue field sanitation standards only if the states fail to provide effective protection within 18 months. In making this announcement, he said that "OSHA will meet its obligation and reduce the risks to farmworkers due to unsafe and unsanitary conditions in the field. Basic human decency dictates that farmworkers be provided with sanitation facilities."

The agency's rationale for not publishing the standards was that states that presently have their own laws in place cover more than three-quarters of the affected workers. In addition, OSHA would only be able to give a low priority to enforcing sanitation standards, given the amount of work needed to protect workers, say, from life-threatening chemical exposure.

The secretary's decision has taken most farmworker advocates by surprise. They are asking why states should be given more time to enact standards since they've had 13 years to do so. They're asking why standards for field sanitation should be considered different from standards for other industrial workers, or from the strict federal sanitation standards that are enforced in poultry processing plants?

These are good questions that deserve answers. But for now, field sanitation joins a long list of other issues, such as trucking deregulation and mandatory seat belt legislation, where the administration has chosen to ask states to resolve difficult situations by threatening to do it for them.

The governors have sought, long and eagerly, for a rational sorting-out process. What responsibilities are those of the federal government? What responsibilities are those of states? How should state and federal government pay for vital services to citizens?

Certainly, there are more colorful examples of pre-emption. The U.S. Supreme Court decision in *Garcia vs. Metropolitan Transit Authority*, regarding coverage of state and local workers under the Fair Labor Standards Act, or regulation of cable television, come to mind. But in a small way, the field sanitation roller coaster is more typical of long-standing intergovernmental problems. ■

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[The prepared statement of Mr. Horwitz follows:]

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STATEMENT

OF

CHARLES HORWITZ, STAFF ATTORNEY
MIGRANT LEGAL ACTION PROGRAM
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OVERSIGHT HEARING CONCERNING SECRETARY OF LABOR BROCK'S DELAY IN MANDATING A FEDERAL FIELD SANITATION STANDARD FOR FARMWORKERS

BEFORE THE

SUBCOMMITTEE ON EMPLOYMENT AND HOUSING,
HOUSE COMMITTEE ON GOVERNMENT OPERATIONS

NOVEMBER 6, 1985

My name is Charles Horwitz and I am a staff attorney with the Migrant Legal Action Program (MLAP). MLAP has represented migrant farmworkers seeking a simple field sanitation standard since 1972[1] and I have worked on this case since 1979. It is a good example of the truism, "justice delayed is justice denied."

Secretary of Labor William E. Brock's decision to delay a federal standard for 18 months, "in the event the states do not take the necessary action" within that time,[2] would seem to be reasonable if it were not for this 13 year history.

1/ National Congress of Hispanic American Citizens v. Secretary of Labor, Civ. Action No. 73-2142 (D.D.C.)[hereinafter El Congreso].

2/ 50 Fed. Register 42660 (October 21, 1985).

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The 13 year old saga of farmworkers' efforts to win the right to workplace toilets, drinking water and handwashing facilities is a national disgrace.

It illustrates how shamefully the richest country in the world treats its farmworkers[3/].

It illustrates the disparity in power between farmworkers and agribusiness -- a disparity that is unparalleled in the American economy. Of the nation's 5 million farmworkers, only 80,000 or 1.6%, are under union contract compared to the national average of 20 percent of U.S. workers who have union contracts.

The Secretary's Federal Register notice "supersedes" the April 16th notice, that no standard would be issued, because a "different balance must be struck in order to give proper weight to the health risks posed."[4/] However, this new balancing act is nothing more than another delaying tactic to maintain the status quo. The new notice does not adopt a regulation. It defers any OSHA action for 24 more months and invites states to promulgate their own standards. "In the event that the states fail" after 18 months, OSHA will decide

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3/ Civilian expenditures for farm foods were $260.1 billion in 1980, according to the U.S.D.A. Economic Research Service.

4/ supra, n. 2.

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whether or not to pass a federal regulation. And the notice fails to specify how many states--one, two or thirty seven--must fail so as to trigger federal action.

Thus, despite the Secretary's admission that there is "clear evidence in the record to date of unacceptable risks to the health of farmworkers arising from the currently inadequate provision of sanitary facilities and drinking water at their worksites,"5/ farmworkers are not any more protected now than previously.

The Secretary's "commitment" to a federal standard in 24 months, if some unspecified number of states fail to act, could be superseded whenever he decides that another new or "different balance must be struck."

Since at least 1978, three Secretaries of Labor have made similar promises to pass a standard. For example, in 1978 the Secretary promised a standard for farmworkers within 18 months.6/ It was withdrawn7/ and a new standard was offered in 1979.8/ In 1980 the Secretary promised a standard within 46-47 months.9/ It was withdrawn

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5/ Id.

6/ Secretary's Timetable for Development of Agricultural Occupational Safety and Health Standards for Field Sanitation, Noise, Nuisance Dust and Personal Protective Equipment, El Congreso (September 22, 1978).

7/ Motion for Leave to Withdraw Timetable, El Congreso (February 13, 1979).

8/ Secretary's Timetable for Development and Implementation of the Field Sanitation Standard, El Congreso, (Feb. 14, 1979).

9/ Secretary's Timetable for Development of A Field Sanitation Standard, El Congreso (June 2, 1980).

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in 1981.[10] In 1981, the Secretary promised a standard within 58-64 months.[11] It too was withdrawn.

In 1982, the Secretary promised a standard within 31 months.[12] It was withdrawn once again.[13]

In October 1981, a federal district court judge in the District of Columbia condemned the Department of Labor's actions:

> Clearly, OSHA's timetables belong in Alice in Wonderland's tales: each step forward brings us two steps backward. That these timetables have not been given in good faith nor decisions made in rational measure is apparent from the testimony at trial.[14]

Why has the Labor Department promised and then reneged on promulgating such a simple sanitation standard? The list of excuses is almost as long as the history of this case. Just last month, the Secretary cited "severe limitations on OSHA's resources [and] OSHA's other priorities" as a reason to delay adoption of a standard.[15]

Department of Labor officials have offered the lack of resources, as an excuse for delay, four times prior to 1985, once in 1977, twice

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10/ Defendants' Report to the Court, El Congreso (May 8, 1981).

11/ Secretary's Timetable For Development of A Field Sanitation Standard, El Congreso (August 17, 1981).

12/ Settlement Agreement, El Congreso (July 16, 1982).

13/ Secretary's Fifth Periodic Report (January 2, 1985).

14/ Memorandum Opinion at 6, Judge June Green. (D.D.C. Civ. Action No. 73-2142 Oct. 30, 1981).

15/ 50 Federal Register 42660 (October 21, 1985).

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in 1978, and once in 1979.16/ Further, new priorities have been asserted as an excuse for delay no less than four times prior to 1985, once in 1977, three times in 1978, and once in 1981.17/

In 1979, the lack of experience of Department of Labor staff was offered as an excuse for delay.18/ In 1978 and in 1981, the

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16/ Secretary's Report Concerning Development of Agricultural Occupational Safety and Health Standards For Field Sanitation, Noise, Nuisance, Dust and Personal Protective Equipment El Congreso (September 6, 1977)

Secretary's Timetable for Development of Agricultural Occupational Safety and Health Standards for Field Sanitation, Noise, Nuisance Dust and Personal Protective Equipment, El Congreso (September 22, 1978).

Secretary of Labor's Response to Plaintiff's Proposed Memorandum Opinion and Order Including Findings of Fact and Conclusions of Law, El Congreso, (October 26, 1978).

Motion for Leave to Withdraw Timetable, El Congreso, (Feb. 13, 1979).

17/ Secretary's Report Concerning Development of Agricultural Occupational Safety and Health Standards For Field Sanitation, Noise, Nuisance, Dust and Personal Protective Equipment, El Congreso (September 6, 1977)

Affidavit in Support of Motion for an Enlargement of Time, El Congreso (August 1, 1978).

Secretary's Timetable for Development of Agricultural Occupational Safety and Health Standards for Field Sanitation, Noise, Nuisance Dust and Personal Protective Equipment, El Congreso (September 22, 1978).

Secretary of Labor's Response to Plaintiff's Proposed Memorandum Opinion and Order Including Findings of Fact and Conclusions of Law, El Congreso, (October 26, 1978).

Defendants' Motion for Enlargement of Time, El Congreso (February 26, 1981).

18/ Motion for Leave to Withdrawn Timetable, El Congreso (February 13, 1979).

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hiring of new staff was said to necessitate further delay.19/ In 1985, DOL cited loss of experienced staff as a reason for delay.20/ In 1984, Department of Labor officials first stated that internal review of analyses and comments required delay,21/ then asserted that Office of Management and Budget review of Department of Labor proposals necessitated further delay.22/

One would think that the issue before the Department of Labor was whether or not to develop a new Star Wars strategy, not whether or not to require employers to provide their workers cool drinking water under the hot sun.

Secretary Brock's latest rationale for delaying a decision on whether to pass a federal standard is unique. No other Labor Secretary thought to make the issuance of a standard dependent on states' actions. However, the OSHAct was never intended to be administered in this manner. The Secretary's states' rights approach is totally contradictory to the purpose of the OSHAct and the policies which led to its enactment.

Section 2 of the Act provides:

19/ Affidavit in Support of Motion for an Enlargement of Time, El Congreso (August 1, 1978).

Defendants' Motion for Enlargement of Time, El Congreso (February 26, 1981).

Defendants' Report to the Court, El Congreso (May 8, 1981).

20/ Secretary's Fifth Periodic Report, El Congreso (January 2, 1985).

21/ Secretary's Third Periodic Report, El Congreso (January 16, 1984).

22/ Affidavit of Patrick Tyson, El Congreso (February 9, 1984).

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> Congress finds that personal injuries and illnesses arising out of work situations impose a substantial burden upon, and are a hindrance to, interstate commerce in terms of lost production, wage loss, medical expenses, and disability compensation payments.[23/]

Congress accordingly federalized many categories of workplace health and safety regulations in the Act.[24/] The Senate report on the OSHAct specifically stated:

> Although many employers in all industries have demonstrated an exemplary degree of concern for health and safety in the workplace, their efforts are too often undercut by those who are not so concerned.
>
> Nor has state regulation proven sufficient to the need. No one has seriously disputed that only a relatively few states have modern laws relating to occupational health and safety and have devoted adequate resources to their administration and enforcement. Moreover, in a state-by-state approach, the efforts of the more vigorous states are inevitably undermined by the shortsightedness of others.
>
> In sum, the chemical and physical hazards which characterize modern industry are not the problem of a single employer, a single industry, nor a single state jurisdiction. The spread of industry and the mobility of the workforce combine to make the health and safety of the worker truly a national concern.[25/]

The field sanitation standard provides a perfect example of the necessity for a federal regulation. Only 13 states have any kind of field sanitation regulation. Even if all 13 state standards

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23/ 29 U.S.C. § 651(a).

24/ Id.

25/ S. Rep. No. 91-1282, 91st Cong. 2d Sess. reprinted in [1970] U.S. Code Cong. & Ad. News 5177, 5180.

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offered as much protection as the proposed federal standard (which they do not, see p. 12 infra), the thousands of farmworkers employed in the 37 states which lack sanitation standards would go unprotected. Moreover, even if there were 100 percent compliance by agricultural employers in the 13 states with state standards, many migrant farmworkers travel out of those states to work for several months each year and are unprotected during these periods.26/ For example, a Florida-based migrant farmworker who migrates from Florida for work on the Eastern Seaboard would not find field sanitation laws in Georgia, South Carolina, Virginia, West Virginia, Delaware, Maryland, Rhode Island, Massachusetts, Vermont, and New Hampshire.27/ Florida farmworkers often work in their home state for half the year, then migrate north to work for the remainder of the year.

OSHA acknowledged in the preamble to the proposed field sanitation standard that communicable diseases do not respect state boundaries and, therefore, a uniform, minimum standard could help control communicable diseases by requiring basic sanitation facilities for workers in all states.28/ That principle was not contradicted by the record at the hearings. To the contrary, OSHA and other public health officials, health experts, and other witnesses

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26/ Ex. 11-020; Porter, The Health Status of Migrant Farm Workers, Ex. 62; Indiana Migrants: Blighted Hopes, Slighted Rights, Ex. 170; Slesinger Ex. 13-412.

27/ See 50 Fed. Reg. 15091.

28/ 49 Fed. Reg. 7590.

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emphasized that the migrant stream phenomenon necessitated a federal standard.29/

The state's right argument now offered by DOL, carried to its logical conclusion, would have prevented the adoption of virtually all federal occupational safety and health standard, since there are widely varying conditions in every industry which could be addressed by the several states. The states' rights argument that DOL now advances did not prevent it from adopting, for example, standards requiring sanitation facilities in virtually all types of non-agricultural workplaces. It is difficult to imagine a situation in which nationwide regulation is more compelling than the field sanitation standard, where the working population moves from state to state and can carry with it the infectious and parasitic diseases that the proposed standard was intended to prevent.

The overwhelming weight of the evidence presented at the 1984 OSHA hearings demonstrated that fewer than 20 percent of the agricultural employers provided toilets, drinking water and handwashing facilities for their workers. For example, among the 13 states with standards:

- In California, a May 1984 survey of 40 farms in four counties found that 50% provided no toilets, 67% provided no handwashing facilities and 50% provided no drinking water. This is a slight improvement over conditions surveyed in 1978.
- A survey in South Florida found that only 37 of 141 farmworkers had access to toilets and only 10 had handwashing facilities in the field.

29/ Stout, Tr. 168, D.C. (May 23); Campos, Tr. 111, Oh. (June 20); Coye, Tr. 366, D.C. (May 24). See also Gutierrez, Tr. 71, 88, Tex. (June 13).

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Compliance with state law in central Florida is less than 10%. Some growers rent "alibi potties" to escape being cited by health department officials.

- Texas Department of Health officials admitted that there is only 50% compliance with field sanitation requirements in the Rio Grande Valley and virtually no compliance in the Northern part of the state. Of 57 Texas Rio Grande Valley farmworkers surveyed, 47 lacked handwashing facilities; 30 said they had no toilets; seven said that the toilets available were unusable, 23 had no clean drinking water. Many large farms with 500 to 600 workers failed to provide field sanitation facilities.

The evidence in the record abundantly showed that the 13 state standards are rarely enforced. In Texas inspectors refused to cite growers in violation of the sanitation laws, even when they were accompanied by farmworker representatives. In one county the district attorney, who failed to enforce these laws, belonged to the same private law firm that represented Griffin and Brand, one of the nation's largest growers. Lack of personnel and funds hampers state enforcement efforts in all the 13 states.

State officials admit that the enforcement of field sanitation is a low priority; a Tulare County, California health official said it was one step above canine sanitation. There is little, if any, outreach or publicity regarding state standards by officials charged with their enforcement. In many areas local officials advance notice to growers and labor contractors before making field sanitation inspections. It is no surprise therefore that there are few, if any, civil or criminal fines levied.

The Secretary also failed to acknowledge in his Federal Register notice that at least 10 of the 13 state standards are significantly defective compared to the proposed federal standard. That standard

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is generally more comprehensive than the standards in 10 of the 13 states:

Toilets: These states either lack specific requirements for toilets or require fewer toilets than the federal standards.

Florida
Idaho
Illinois
New York

Handwashing: These states either lack specific requirements for handwashing facilities or permit use of moist towelettes as a substitute.

Colorado
Florida
Idaho
Illinois
New Jersey
New York
Pennsylvania

Distance to Facilities:

These states either lack specific requirements or permit greater distances than the federal standard.

Connecticut
New York
Pennsylvania

Drinking Water:

Idaho lacks a requirement for drinking water.

Colorado's law is voluntary and non-enforceable.

The proposed OSHA standard has stronger provisions and provides for more stringent penalties than those in 13 states.

Congress provided in section 18 of the OSHAct through the approved state plan program,30/that states may regulate occupational safety and health even though a federal regulation has been adopted. Congress thus struck a balance between federal and state regulation

30/ 29 U.S.C. § 667(a).

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of workplace safety, which would be undone by the Secretary's states' rights' rationale.

Secretary Brock does not explain why farmworkers, of all workers in the country, should be denied the right to a federal sanitation standard only if the states fail to act. Evidently the Department of Labor, until now, understood and respected the limitations on its authority. In the 15 years since the OSHAct was passed, this appears to be the only time the Department of Labor has attempted to turn over to state legislatures the decision of whether or not there will be health and safety standards for American workers.

In 1983 the Department of Labor issued federal regulations on how much information on toxic chemicals had to be disclosed to exposed workers. These federal standards preempted state laws that were more stringent. Now Secretary Brock is taking the opposite course in the name of states' rights. He fails to explain this inconsistency.

Finally, it should be noted that benefits to workers and their employers from field sanitation standards would clearly outweigh the costs of 73 cents per day per worker. Based on likely reductions of infectious diseases alone, promulgation of the sanitation rule is likely to increase workers' productivity between $79 and $120 million yearly. Other experts believe that similar increases in worker productivity would be likely based on reductions of urinary tract infections, pesticide poisonings and heat stress.

For all of these reasons I urge this subcommittee to take the proper steps that are necessary to ensure that a field sanitation standard is enacted into law as soon as possible.

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STATEMENT OF RUDY SALINAS, MIGRANT WORKER FROM FLORIDA

Mr. SALINAS. My name is Rudy Salinas. I come from the Immokalee area of Florida.

I have been in migrant work for at least 14, 15 years of my life that I can remember. In my experiences I have come to question myself, why all this talk about restrooms and water and drinking water?

You know, it is just a necessity that everybody else has. You don't know how embarrassing it is to go out in a field, you have to look for a spot, a wooded area, or right behind the rows a couple of blocks from where you are picking and to take care of your necessary stuff there. Either urinate, or whatever.

Now that is embarrassing.

I remember one time I went into these woods to do my thing, I guess—I don't know how to explain it. But, when I was there, this lady went by me and saw me, and it was this Haitian lady, and she kind of looked at me, jumped back and said, it's OK poppy, it's OK.

Now that is embarrassing.

You know, like women, when they are there, they have a hard time finding a place to go. Most of the time there isn't any place to go. There is too many people, really. So, what they do is that they wear a long skirt and underneath they wear pants. So what they normally do is just go forward a little bit, squat down, take their pants down and the skirt covers them up so nobody sees them. But you know what they are doing all the time.

Like the guys, it is easier, but it is also degrading. They have to stand up and urinate on the plants. And they have to look around like they are doing something else, you know, swishing around—[whistling].

So, you know what they are doing. But that is the way it is. And that is why we need the toilet part.

And on the drinking water, most crew leaders that I work with do provide water. But the containers—they are supposed to supply cups, according to the Florida State law or code, which are not enforced. What we do is grab a can or a bottle, rinse it out and drink out of that.

Most people now are afraid of—I don't know if you are aware of it but in Immokalee, there have been at least a dozen cases of AIDS and so on. So when we are picking peppers, pickles, what they do is cut the biggest one they can find, they just break it open, clean it out and drink from that. And then when they are done with it, they throw it away.

And after a while of all this, people coming and drinking water and doing that, the grower usually comes around or the foreman or whatever he is called, and he takes a look on the ground and he sees all those peppers there and he complains about the money he is losing.

So, we have no choice. It is either that or just drink from those cans.

On the washing your hands part, water we should have. It is pretty hard for us. What we do is, when we are getting ready for lunch we grab a tomato, a ripe tomato, break it, rinse your hands

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with it, and then you run into the drainage ditch there and rinse your hands out. And that is not really rinsing your hands out, because that is really where all the pesticides go when they drain off.

Another thing is, when we dry our hands it is on our pants. Just swish it down your pants trying to dry your hands as quick as you can to get to lunch.

It is a heck of a way to make a living, but that is the only way I know and so do a lot of other people.

You were referring to the right to know things about the pesticides. We never know what is on those plants. We never know if it is paraquat or whatever. So—I know my brother-in-law—I know one case where he was infected by that pesticide. His hands became leathery, like real dry, chapped. Whenever he made a fist it would break open and bleed. So, he had to quit that job.

Another lady that I know, she is a neighbor of mine, Sue Querada, she had encountered a problem with the restroom part, where her bossman told her she couldn't go anywhere because it was piece rate. You can't lose any time on piece rate. You have to stay working. You stay behind, somebody else has to help you and it just disrupts everything. So, he told her she couldn't go anywhere, that she had to hold it in all day long. And she complained about pains and so on.

So that day she worked the whole day.

The next day she went again, but she had to quit early because she couldn't take the pain any more.

So, by my way of thinking, nobody should have to go through all that discomfort and indecency just for a lack of facilities which is just common decency and common sense. I don't see why anybody should be exempt from what is just a human part.

[The prepared statement of Mr. Salinas follows:]

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Testimony of Rudy Salinas

to the
Employment and Housing Subcommittee
of the
Committee on Government Operations
for the
Hearings on H.R. 3295

November 6, 1985

Introduction

My name is Rudy Salinas, and I live in Immokalee, Florida. I am 36 years old and the fifth son of farmworking parents. I have been doing farmwork since I was about 12 years old, although I did get out of the fields for a few years working in maintenance at the University of Notre Dame and later as a truck driver. Now I do some picking, but most often I load and drive a truck from the field to the packing house. I have done field work mostly in Florida, Virginia, Ohio, Michigan, Indiana and South Carolina, picking tomatoes, cucumbers, bell peppers, potatoes, and some citrus. I have also cut cabbage, and celery.

My wife, Sonia and I have three children, Ofelia, 12, Rudy, 10, and Omar, 7. We met in the pickle fields of Michigan. And now my oldest two children do field work, when it is available, on the weekends.

After we got married I tried to get out of field work and began to work in maintenance in South Bend, Indiana. I later got a

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better job driving a truck in that same city. But the company I worked for shut down. I wanted to get out of field work because it is not safe, not decent, and it is not the right way to bring up your children. Some of the homes we have had to live in as farmworkers did not even have indoor plumbing. Now we live in a Farm Worker Village, built with loans and grants from Farmer's Home Administration. But I am here to talk about the need for a federally regulated field sanitation law in the fields where I work, I am talking about having such basics as drinking water, toilets, and handwashing facilities at my work place.

Many of my experiences which follow, come from my working experience in Florida which currently has a code requiring field sanitation. It is supposed to be enforced by the local health departments but it is not, and I have never seen any in the fields trying to enforce it. I also travel to work in different states and I have never seen anyone trying to enforce it there, either.

The need for toilets

Between some of the fields where I work, there is a wooded area. It gets a lot of traffic in and out, during the day. To walk in there, it is like walking in a minefield. You have to be careful where you walk. (You don't want to step in someone else's

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feces.) One day when I walked in there to defecate, there were quite a few people in there doing the same thing, using the trees as a blind. I saw many of the workers and I tried to walk over in an area where I could be alone. Just as I began squatting to do my thing, a Haitian woman, a fellow field worker, came walking by me. When she saw me, she was shocked and she said as if to apologize: "That's okay poppy, That's okay." I was embarrassed.

Usually the Haitian women are smart. When they work in the fields they wear slacks underneath their skirts. Then when they feel the urge (to defecate or urinate), they just pull down their slacks and their skirts form a blind so they can do it right in between the rows of vegetables they are picking. It saves them time.

When there is no woods to go to, to relieve yourself, or when there the ditches are too far, it is not uncommon for a field worker to just go into another field and squat down between the rows of vegetable plants, using them as a blind and do it (defecate or urinate) there. Most other field workers are nice enough to tell you "there's a big one over there" but usually they know because they have already stepped in it.

Now, I am a truck driver. And I am the one who suffers when people do it (defecate) between the rows. When the people pick in the fields, they drag their picking bucket between the rows as they pick the vegetables from the row. And if it is not during

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the first picking, during the second or third picking the bucket gets dragged through the feces. Then when the bucket is full and needs to be dumped, it is handed to me to be dumped in the boxes on the truck. Then I get it (the human feces) on my hands. I am sure it gets on the vegetables, because I have to spread them around in the boxes on the flat bed truck so the boxes can be stacked. And I pull the stems off of some of the tomatoes, and I sort through them to throw out the rotten ones or the ones which are too small. Sometimes I don't notice it (the human feces) right away on my hand and it will be two or three buckets later when I can smell it (the human feces), so I don't know which bucket it came from.

Also when there is no woods to go to or when the ditch is too far, the guys especially, will just stand up, walk a little distance, and do it (urinate) on the plants. It is embarassing, but we can't make it look like we are urinating, because the crew leader will see us and think we are wasting time. The guys figure as long as no one sees exactly what they're doing its okay, so they may twist and turn as they do it (urinate) as if to make it look like they are just looking around and they urinate on several plants.

One of my neighbors, Sue Padilla, had to stop work last week. She was picking tomatoes at piece rate, and her crew leader did not want her to waste time going to the bathroom by walking over

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to the next field to relieve herself (urinate). She had to hold it all day in the hot Florida sun. She got pains in her stomach and back from holding it (the urine), because the crew leader did not want her to lose time by relieving herself. After the second day, she couldn't take the pain anymore and she stopped working. She will probably go back to work when the pressure of piece-rate work is over.

The need for handwashing facilities

Lunch time is usually the time when we want to wash our hands. When working in the tomato fields, I usually get a ripe tomato, break it open and wash my hands with it. Then I go to the irrigation/drainage ditch to rinse-off my hands. Crewleaders usually provide drinking water, but they do not let you waste it by washing your hands with it.

When we wash our hands, we usually are in a hurry to eat, and get back to work, so sometimes we wipe our hands on our clothes to help them dry. But the same pesticides, herbicides and fertilizers that are on our hands, are also in the ditch we rinse in, and on our clothes we dry with.

I like to take hard boiled eggs to the fields for lunch. But even after washing my hands like this, when I peel the shell off the egg, I can see the green color of the pesticides, herbicides

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and fertilizers on the white of my egg. Even if I try to peel the shell with my fingernails, it still looks green before I am done peeling it and ready to eat it. I can see the white of the egg, absorb the color of the plant sprays. And when I am hungry after a full morning of work, I am not going throw the egg away. I eat it, even if it is green.

Sometimes I will eat a tomato in the field after just rubbing it off on my clothes, like other farmworkers do. We can't wash it off, we don't even have water to wash our hands with.

My brother-in-law, Salvador Conde, used to work for the crop duster, the spraying plane, because he had some experience mixing chemicals for field application. He had no hand washing facilities so he quit that job because his hands turned leather-like and his skin dried up so that when he would make a fist, the cracks would break open and bleed. That's usually worse than most farmworkers' hands, but when we get open sores on our hands it takes a long time to heal because of what they are exposed to.

When we pick, we usually wear long sleeves because the sprays on the plants dry on the hairs of your arms and only water will rinse off the caked-up plant sprays. These cause cause pain when you try to scratch your arm. But when it gets hot, sometimes workers will roll up their sleeves and be sorry when they rub their arms with all that spray residue making each hair stand

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up. It pulls all the hairs on your arms, and it is painful when you scratch it dry.

The need for drinking water

Crew leaders usually provide drinking water in the fields. They bring big five-gallon coolers full of ice water. Some of them also put beer and soda cans in it to keep them cold. The crew leader and people who buy beer or soda from him, dip their hands into our drinking water to pull their can out. This pollutes our drinking water. This is the same water we can't wash our hand with. Also, when we go to draw water from these coolers, the button to open the valve is so close to the spout, that when we push the button, our fingers or thumb can't help but get in the way. So all the green stuff that is caked on our fingers is being rinsed into the water we drink.

Since there are no cups to put the water in, we usually look around the truck for a can or a bottle and everyone ends up drinking from the same container. But there is such a fear of AIDS (Acquired Immune Deficiency Syndrome--about a dozen cases have been discovered in our area) and other diseases, that more and more people just won't drink that way -- from the same can or bottle.

One of the ways to get around the common can problem in the

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pepper field is to find the biggest pepper, cut off the top, scape it out and use it as a cup. Then we throw it away when we are done. But the farmer gets mad when he sees a bunch of cut up peppers laying around. He thinks he is loosing money.

I have actually seen a crew leaders, when the drinking water runs out, go over to the irrigation pump, which pumps water across ditches or out of the ground, and put the five-gallon cooler under the gushing water and fill it up. This water smells like sulfur, or rotten eggs and it is kind of yellow. But when there is nothing else to drink, we have to drink it. Our only other alternative is to dehydrate. It gets hot under the afternoor sun.

Conclusion

It is for these reasons that I feel federal field sanitation laws are necessary. These are real experiences from my life in the fields. Other farmworkers have stories like these and worse. Some get sick from the lack of field sanitation. But because of experiences like this, I come to Washington to ask for federal field sanitation regulations.

Thank you.

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Mr. FRANK. Thank you, Mr. Salinas. I appreciate your sharing those very relevant experiences with us. I think they underline the personal dimension here.

I guess the thing that bothers me is, Secretary Brock has said this is wrong, there are facilities people ought to have, and if they will just wait 2 years, I will see that they get them.

He has admitted that these things ought to be there. He has the power to correct it and he is going to wait 2 years.

Dr. Louise Weidner.

At this point I would like to insert in the record, the statement of your coworker, Dr. Olsen, who, I guess, can't be with us today. There is a statement of Dr. Donna Olsen, who is the health director of the Utah Rural Development Corp., and we will put her statement in the record along with whatever you want.

So, please go ahead.

[The prepared statement Dr. Olsen follows:]

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INFECTIOUS DISEASE AND FIELD WATER SUPPLY AND SANITATION AMONG MIGRANT FARMWORKERS

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INTRODUCTION

Although no one knows the exact number, it is estimated that there are between 5,000 and 10,000 migrant and seasonal farmworkers employed or living in the state of Utah each year. Some have a home base in Utah (58%), working here and traveling to other states and other parts of Utah; and others are based throughout the U.S. and Central America. Migrants in Utah either work in the orchards (primarily apples and cherries), on row crops (onions, parsley, radishes, and potatoes), or in turkey raising and processing.

In spite of the fact that migrant workers have been coming to Utah for decades and are a major source of inexpensive labor for one of the state's biggest industries, there is currently no law in Utah regulating the provision of water and sanitation facilities at the worksite. Utah does have a sanitation law for field labor camps, but there are so few of these in Utah that there is little impact from the minimal enforcement.

In my capacity as Director of the Migrant Health Project in Utah, I initiated a research collaboration with Dr. Louise Weidner of the University of Utah, Department of Family and Community Medicine. We subsequently defined our objectives as investigation of: 1) water- and sanitation-related disease symptoms in the migrant population; 2) the provision of water and sanitation facilities for farmworkers by their employers; and 3) farmworkers' knowledge, attitudes, and practices regarding disease, sanitation,

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and hygiene. This unfunded investigation was begun in response to the request for expert testimony regarding the proposed OSHA Field Sanitation Standard. This testimony is our report of the water- and sanitation-related symptoms which can be used as a marker of infectious disease, and the current practices of the farmers in Utah employing migrant and seasonal farmworkers in regard to the provision of field sanitation. Knowledge and attitudes of farmers will be presented by Dr. Weidner.

METHODS

Groups and Variables

The chart audit for farmworkers included four of the six Migrant Health Clinics. A remaining clinic was eliminated because primary care was subcontracted for with the local Community Health Center, and those charts were not available. (Sociodemographics of that group are similar to those audited.) The sixth clinic was eliminated because its clientele were employed in the turkey industry and their access to facilities was not comparable. The audit included all 936 patients seen more than once from January 1, 1982 through May 31, 1984. (One-time users comprise less than 5% of patients and are "drop-ins" passing through the state.)

No farmworker population with known adequate facilities was identifiable for comparison. Charts available for auditing were from the three federally funded Urban Health Initiative (UHI) clinics serving the economically disadvantaged of Salt Lake

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County. That audit also spanned January 1, 1982 through May 31, 1984 and included 8968 users. I founded the UHI project and am familiar with the clientele. While 97% are low income by OMB poverty guidelines (as are 100% of migrants), all live in fully plumbed dwellings, are not employed in agriculture and are non-migrating, lessening the likelihood of fecal-related diseases from employment or lifestyle. Ethnic composition varies. Migrants are 75% Hispanic, 20% Native American, and 5% Caucasian, Oriental, or Black. UHI patients are 13% Hispanic, 2% Native American, 54% Caucasian, and 21% Oriental or Black. Although ethnic disparity between groups has not resulted in confounding employment or lifestyle similarities, many UHI Orientals are refugees who arrive in Utah with fecal-related diseases and whose infection may continue through inappropriate use of water and sanitation facilities and the poor nature of their housing.

The UHI population is 36% males, compared to 51% among migrants. It also varies in age distribution. These differences largely result from the disparity in program foci (UHI has a strong OB-GYN service; Migrant Project initiates blood pressure screening, etc.) As of this study, however, neither project had provided health education on fecal-related or other infectious diseases. Differences in cultural orientation and education (the UHI population is more educated) may bring a higher UHI usage of the formal health care system for most ailments. Higher UHI usage may also result from economic differences since many migrants are paid by productivity and have disincentives to seek

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care during work hours. It may also be a function of access to care since many migrants must rely on their employers for transportation.

Diagnosis of infectious dieases requires lab work which the URI and Migrant projects can't afford, so the audit focused on common fecal-oral indices. Primary among these symptoms is diarrhea of unknown origin. While diarrhea can be the result of various agents and accompany numerous ailments, it is widely known among public health researchers and practitioners as an indicator of fecal contamination among populations without adequate excreta disposal facilities:

> The dramatic symptoms of diarrheal disease have claimed the attention of man from time immemorial. Today all countries recognize that these are to a major extent diseases of an insanitary environment. Lack of adequate, safe water; lack of protection from human excreta, contaminated food, filth, and flies--all promote diarrhea.[1]

Diarrhea of abrupt onset occurring in otherwise healthy persons is most often related to an infectious process. A variety of accompanying symptoms is often observed, including fever, headache, anorexia, vomiting, malaise, and myalgia, but they cannot always be used to distinguish the causative agent with certainty.[2]

Other symptoms used in the chart audit, which are often incidental with diarrhea, were nausea and vomiting, gastroenteritis, intestinal or abdominal pain, bloody stools, and fever, all of an unknown origin.

To be counted, the symptom had to be unaccompanied by a chronic or noninfectious symptom or diagnosis for two months

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before and after its presentation and an acute or infectious symptom or diagnosis for two weeks before and after its presentation. Symptoms occurring more than once in a week's time were counted as one event.

The survey of Utah farmers and growers employing migrant and seasonal farmworkers in Utah was done by phone. It was difficult to contact farmers who employed (or admitted to employing) migrant farmworkers. Using lists developed by Utah Employment Security and the Farm Bureau and our own Health Project registration forms, we contacted a 22% sample, stratified by clinic area. The interviewer selected the next name on the list if the farmer chosen in the random sample could not be located. Of the 107 farmers located and contacted, 36 (34%) stated they do not employ migrant farmworkers, and 6 (6%) refused to respond. The calling was conducted while there was much publicity by the local media on the Simpson-Mazzoli Bill, and the Immigration and Naturalization Service was conducting raids for illegal aliens on the Utah farms. Thus, some farmers may have been reluctant to admit to employing migrants. Those responding were asked their opinions regarding the nature and extent of health problems among farmworkers and their children; practices in providing water, sanitation, and handwashing facilities in the field; opinions and observations regarding farmworkers' voiding habits during work hours; and perceptions of the impact of farmworkers; health and health habits on the public's health.

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Data Analysis

Analysis of the telephone survey data entailed tabulation only. Chart audit data were calculated as rates of symptoms per 1000 clinic users for both the migrant and urban groups. High disparity in rates obviated further analyses.

Frequency of the symptoms of interest relative to other ailments (relative frequency) was not obtainable because no computerized recorded system exists for migrant data (migrant charts were audited manually). Also not determinable were the incidence rates (the number of new events occurring at or during a specified time, divided by the total population at risk for the event for the same time period) and prevalence rates (the number of persons with the disease at or during a specified time, divided by the number at risk). These could not be obtained because of the unknown denominator (total population at risk) among the migrant group. Not only is this unknown, but we have no estimates of the migrants living within catchment areas for each clinic, essential since two clinics were eliminated from the audit. Migrants in Utah only register with our program when they require a service. At that time, they may indicate how long they have been in the area, but most cannot project length of stay, since they often leave unexpectedly. While they may return later, they do not reregister at that time, and their period of absence is thus not determinable. Estimation problems are complicated by the fact that undocumented workers are least likely to register for our program or request service. Problems

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in determining number of migrants are not unique to our program or state. In ract, the Central Office for Migrant Health in Washington has contracted with expert consultants to develop a methodology for addressing for problem.

RESULTS AND SUMMARY

Table 1 shows that the rate of diarrhea was almost 20 times higher in the migrant population; nausea and vomiting, 13 times higner; abdominal or intestinal pain, nearly 7 times higher; gastroenteritis, 26 times higher; bloody stools, 9 times higher; and fevers of unknown origin, 120 times higher. Seventy-seven percent of total symptoms among migrants occurred in the fieldwork season of April through October. No seasonal distinction occurred for symptoms among UHI patients. When symptoms were infrequent, such as bloody stools, true disparity is questionable. Clearly, however, migrants generally presented more frequently with symptoms that are indices of poor sanitation and hygiene or impure drinking water. Since migrant charts were hand audited, their symptoms may be underrepresented.

Results of the telephone survey may help explain the relatively higher incidence of their symptoms.

--No farmers provide a tapped drinking water in the fields. While 95% reported that drinking water was available in the fields, the preponderance (61%) provided this in the form of jugs.

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--Only one farmer provided handwashing facilities on the farm site.

--Only 34% of farmers provided toilet facilities anywhere on the farm site, and the preponderance of those were outhouses rather than chemical or water/flush toilets.

The Health Project staff, many of whom have worked with the migrants for years and visit the fields and orchards almost daily, report that many of these facilities are in disrepair to the point of being nonfunctioning. Our visit to all farms in Salt Lake County indicated a virtual lack of in-field facilities. Our clients report that they often travel to a gas station or other public place to wash and use the bathroom because the farmer's facility is so dirty or malfunctioning. The migrant staff also indicate doubt as to the truth of the farmer's responses, particularly regarding the availability of toilet facilities. Further, the provision of jugs for drinking water is inadequate and leads to drinking of ditch water.

We have reported preliminary results of a study directed toward determination and upgrading of migrant health status. A review by P. Eugene McJunkin[3] presents the result of several other studies in the U.S. in which diarrheal disease and gastroenteric illness are also related to water supply and sanitation.[4-10] According to McJunkin,

> Hollister, et al. (1955) in a study of migrant labor camps found the prevalence of shigella infections lowest with water and flush toilets inside dwelling, 3.6 times higher with water and privy outside. Similar findings were found in poor communities in Georgia by Stewart, et al. (1955), McCabe and Haines (1957), and WHO (1964). These well implemented studies established the

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importance of convenient access to adequate quantities of water for control ror diarrheal disease.

Peterson and Hines (1960) found a strong statistical correlation (P less than 0.01) for rate of gastroenteric illness versus water quality ror 6 towns in Colorado. The level of contamination would be considered minor for rural water supplies in ueveloping countries.

Berg and Mowery (1968) in a study of 1,943 American Indians living on reservations in four states found that the number of enteric disease outpatients fell modestly (15%) for a group with one or two water taps and mixed toilets and pit privies, while enteric disease outpatients for a group without inside taps and with pit latrines rose slightly.

Rubenstein, et al. (1969) in a study of a Hopi Indian village, found that clinic visits for diarrhea per inhabitant dropped .rom 2.0 per year to 0.85 per year following installation of an indoor plumbing supply. In a control area without indoor plumbing, clinical visits dropped rrom 3.1 to 2.6 per year over the same time span.

Debators of a proposed rield sanitation standard questioning the evidence of significant risk to migrants have only to consult the thousands of articles published worldwide linking recal contamination to health among populations similar to the farmworkers. Dr. Weidner will now give an overview of those studies and will indicate the efficacy of the field sanitation standard based on health principles and policies established at the international level and their pertinence to the migrants in the U.S.

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Table 1

EPISODES OF WATER- AND SANITATION-RELATED SYMPTONS AND DISEASES PRESENTING AT CLINICS SERVING UTAH MIGRANTS AND UTAH URBAN POOR, CALCULATED PER 1000 CLINIC USERS

	Migrant Clinics					
Symptom/Disease	Brigham City	Midvale	Provo	Beryl Junction	Migrant Total	Urban Poor Clinic
Nonspecific Diarrhea	30	166	206	210	153	8
Abdominal/Intestinal Pain including Shigellosis and Giardiasis	70	69	71	32	66	10
Nausea and/or Vomiting	10	65	76	32	51	4
Nonspecific Gastritis/Gastroenteritis	33	18	31	8	26	0
Bloody Stools	0	5	14	16	9	1
Fever of Unknown Origin	20	28	51	40	37	0.3
Tuberculosis	10	28	23	0	19	0.8
Helminthic Infestation	0	37	34	48	28	0.8
Urinary Tract Infection	37	51	48	8	41	14
Number of Charts Audited	242	217	353	124	936	8968

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STATEMENT OF DR. LOUISE WEIDNER, ASSOCIATE INSTRUCTOR, UNIVERSITY OF UTAH DEPARTMENT OF FAMILY AND COMMUNITY MEDICINE

Dr. WEIDNER. I'm covering both statements.

There are between 5,000 and 10,000 migrant and seasonal farmworkers employed or living in Utah each year. Despite the fact that they provide a major source of inexpensive labor for one of the State's biggest industries, there is no law in Utah regulating the provision of water and sanitation facilities at the worksite. Utah has a sanitation law for field labor camps, but there is little impact from the minimal enforcement.

We decided to investigate water and sanitation-related diseases among the migrant population. Since the diagnosis of specific infectious diseases requires costly lab work, we focused on migrant medical chart audit for selected symptoms, usually associated with fecal-related disease. The frequencies of diarrhea, nausea, vomiting, gastroenteritis, abdominal and intestinal pain, bloody stools, and fever were compared with a similar patient group with adequate sanitation facilities. The audit spanned January 1, 1982, through May 31, 1984. It included 936 migrants and 8,968 comparisons.

The rate of diarrhea was almost 20 times higher in the migrant population; nausea and vomiting, 13 times higher; abdominal and intestinal pain, 7 times higher; gastroenteritis, 26 times higher; bloody stools, 9 times higher; and fevers of unknown origin, 120 times higher.

Seventy-seven percent of the total symptoms among migrants occurred in the fieldwork season of April through October. No seasonal distinction occurred for symptoms among the other patients. Since migrant charts were hand audited, and charts for the comparisons were fully computerized, migrant symptoms may be underrepresented.

Subsequent to the chart audit, we performed two surveys. One was a random sample phone survey of 22 percent of Utah's 456 farmers registered with Utah Employment Security or the Farm Bureau. No farmer provided tap drinking water in the field, 61 percent provided jugs. Only one-third of farmers provided in-field toilets. We visited all farms in the Salt Lake County area where many toilets were reported, and found no operating toilets. Again, the provision in Utah is voluntary. One farmer provided hand washing facilities in the field.

Thirty-three percent felt that the health conditions of migrants needed improvement, and only 11 percent felt that the migrants have a serious health problems. Only 18 percent felt that diarrhea was a significant health problem among migrants. Only one felt that migrants or their children have a significant problem with nausea, vomiting or fever. Greater than one-half of the farmers who reported that they provided facilities also reported that the facilities are generally unused. But, the migrant staff, our site visits and migrants themselves indicated this is a result of poor accessibility and poor maintenance.

This indicates educational needs of farmers. Lack of use may also indicate a lack of motivation or knowledge among migrants.

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However, a second survey was conducted among 70 farmworking female household heads who could report on the health and hygiene habits of family members. The overwhelming majority indicated that they and their family members routinely used toilet facilities that are made available at the home and work sites.

That this practice is of intuitively obvious benefit to health is evidenced by the fact that the practice occurred despite respondents lack of knowledge of the finer details of the fecal oral pathway.

Again, major concerns from the respondents were privacy—again respondents were female—catching cold in the winter months, and being exposed to snake and insect bits. All of these are logical concerns.

Let it not in any way be construed from my collection or presentation of these data that we believe additional studies regarding migrant health should be a condition for promulgation of the standard, or should be a condition for a Federal standard. Our goal in the presentation of these data is the removal of excuse for further Federal delay and not to educate on obvious points. To that end, I summarize by briefly presenting some international health principles and perspectives and their relevance to the issuance of a Federal standard.

In 1977, the United Nations held a special health session in Mar Del Plata, Argentina. It was unanimously agreed that the inadequacy or inaccessibility of excreta disposal facilities was the No. 1 barrier to health in the world. The second greatest barrier, and which often results from the first, is inadequacy or inaccessibility of safe drinking water. As a result, the UN declared the 1981-1990 period the UN Drinking Water Supply and Sanitation Decade. The global goal of that decade is the provision of safe, accessible drinking water and adequate excreta disposal facilities to all people of the world by 1990.

Infant deaths from diarrhea incidental to fecal contamination are conservatively estimated at 40,000 daily. If sanitation-related deaths of children in the Third World were decreased to those of the First World, life expectancy there would approach that of North America. Eighty percent of diseases worldwide are fecal-or water-related. In addition to these direct health effects of poor water and sanitation, economic development suffers. At least 10 percent of productivity is lost to water-related diseases in the Third World.

Everyone, including Secretary Brock, acknowledges the similar relationship between facilities and migrant health. And the issue now is one of whether a Federal mandate is warranted. The decade has developed some policies and objectives which may be of interest here. First, it recognizes that excreta disposal and drinking water facilities must be a package deal. One without the other is inadequate to significantly improve health; second, facilities must be reasonably accessible, third, and most relevant here, policymakers recognize that setting a general mandate for facilities for all people was itself the first step in obtaining local commitment to provision and resolving logistic and economic issues.

This was consistent not with a centralise-controlling philosophy but with the logical philosophy that the dissemination of motivat-

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ing data on health facts, and the dissemination of information regarding culturally, environmentally and economically appropriate technology and all other state-of-the-art information regarding health and facilities was facilitated by a large-scale organized and cooperative effort rather than fragmented, highly localized efforts. My work in the Third World has demonstrated to me that this rationale has significantly improved the ability and the likelihood of providing facilities by individual governments.

Finally, a major decade focus is health education. Apparently in Utah, educational needs of the farmowner are more a barrier to migrant health and hygiene practices than educational needs of the farmworkers.

The United States is still debating the need for a Federal sanitation standard among only one sector of its work force not federally covered, while the rest of the world moves toward a provision of facilities for all. That this debate continues in the face of OSHA's own acknowledgement of the causal link between health and facilities and the fact that voluntary provision is clearly not working, smacks of discrimination and negligence.

That the standard has been further delayed again, bringing 18 more months of disease risk and realization, and that testimony continues to be required prior to promulgation, frankly raises suspicion in the medical community regarding the sincerity of policymakers to ever promulgate or enforce a standard and to ensure facilities to farmworkers, an insurance that clearly must take place at the Federal level.

States have long tolerated OSHA and its sanitation laws for all other sectors of the work force, and can certainly survive one additional Federal mandate. The basic right to health clearly is seen to supersede States' rights. Hence the existence of OSHA. Further, the negligence on the part of States to promulgate a standard does not justify Federal negligence in this respect.

Our data presented here were collected last summer. While we have no immediate data, I doubt that Secretary Brock's statement on State responsibility and the 18-month period has resulted in an immediate clamoring on the part of Utah farmers to provide adequate facilities. I can't comment on the progress at the political level.

[The prepared statement of Dr. Weidner follows:]

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THE ROLE OF DRINKING WATER AND EXCRETA DISPOSAL FACILITIES IN HEALTH: INTERNATIONAL PERSPECTIVES & HEALTH PRINCIPLES AND THEIR PERTINENCE TO U.S. MIGRANT FARMWORKERS

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Dr. Olsen has just presented evidence of denigrated health status among migrants in Utah and that their health status is likely compromised by a lack of water and sanitation facilities. As she mentioned, the study was performed in response to testimony request made due to ostensibly little indication that lack of facilities compromises migrant health status. However, let it not be in any way construed from our collection and presentation of these data that we believe additional studies regarding migrant health status should be a condition for promulgation of the field sanitation standard. Our goal in the presentation of these data is the removal of excuse for further delay and not to educate on obvious points. To that end, I present to you some international health principles and perspectives and their relevance to migrants in the United States.

In 1977, the United Nations held a special health session in Mar Del Plata, Argentina. It was unanimously agreed that the inadequacy and/or inaccessibility of excreta disposal facilities was the number one barrier to health in the world. The second greatest barrier, and one which often results from the first, is the inadequacy and/or inaccessibility of safe drinking water. As a result, the U.N. declared 1981-1990 the U.N. Drinking Water Supply & Sanitation Decade. The goal of that Decade is the provision of safe, accessible drinking water and adequate excreta disposal facilities to all people of the world by 1990. Further, it was agreed that the provision of these facilities is not only

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a basic human right and sound disease prevention tactic, but that their provision is a main element to primary health care.[1]

What data are available from which to draw such conclusions? Addressing first excreta disposal facilities, it is known that the lack of these facilties promotes the fecal-oral pathway in the living and working environment, and when fecal matter reaches a water source, can impact the health of an entire community. In the Third World, only 25% of people overall and only 13% of rural dwellers have access to adequate excreta disposal facilities.[2] In a review of WHO health data, F. Eugene McJunkin[3] points out that lack of these facilities has resulted in at least 200 million cases of schistosomiasis passed from person to person through urinating into a water source. Over 600 million people are exposed on a continual basis. Over 500 million diarrheal episodes occur in children under 5 years, resulting from fecal pathogens which reenter through the mouth, thus following the fecal-oral pathway. Infant deaths from diarrhea incidental to fecal contamination are conservatively estimated at 40,000 daily. If sanitation-related deaths of children in the Third World were decreased to those of the First World, life expectancy there would approach that of North America, whereas it is now around 50 years. The relationship of many of these infections to drinking water is clear in consideration that it is known that 57% of people globally and 71% of rural dwellers are without any access to safe drinking water,[4] and that 80% of ingested water is fecally contaminated. Further, since 80% of diseases world wide are

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somehow water-related, those diseases not resulting from ingested water indicate the need for water pure enough for handwashing, dishwashing, and so forth. In addition to the direct health effects of poor water, economic development suffers. At least 10% of productivity is lost to water-related diseases in the Third World.5

How do these data compare to those for migrant farmworkers? Sanitation and drinking water facilities availability nationwide is unknown definatively, but existing data indicate it is similar to availability in Utah, just described by Dr. Olsen as Third World comparable. Similarly, migrant health status and life expectancy is Third World comparable, with life expectancy around 55 years. Is this compromised health and longevity a result of the infectious process? Diarrhea is a direct indicator of infection, specifically fecal contamination,6 and the episodes in Utah of these and other fecal-related indices demonstrate an exaggerated infection rate among migrants. These data only represent known cases. Decrease in productivity has also been documented. Even if the effects of facilities deprivation to health and productivity of migrants were not fully documented and acknowledged by OSHA, they could certainly be inferred from global data presented above.

The Decade has developed some policies and objectives which may be of interest here. First, it recognizes that excreta disposal and drinking water facilities must be a "package deal". In other words, one without the other is inadequate to

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significantly improve health. The nature of the proposed field sanitation standard reiterates the principle. Second, facilities must be reasonably accessible so that there is not a burden or in any way unreasonably deterred. Poor access is a severe deterrent to facilities use in Utah, where migrants are paid by productivity and are reluctant to leave the work site. It is critical to note that, because of the enormous climatic, geographic, and cultural diversity of the Third World, reasonable access has been difficult to standardize, and the agreement of requirments for migrants also seems to be a stumblingblock. However, the difference between the international and U.S. cases is that international policy-makers recognized that setting the mandate for facilities for all people was, itself, the first step in the commitment to resolving logistic and economic issues.

Finally, a major focus of this decade is health education. Achievement of health is a complex goal. Without facilities, there is no potential for health. Without education, the potential for health from the facilities is lessened. Results of a survey conducted among 50 farmworking women in Utah point out the efficacy of health education policies. The mean respondent age was 32 years, and the mean educational achievement was 8th grade, with a range from illiterate (4 respondents) to high school completion (3 respondents). When asked if the lack of in-field toilet facilities was a potential health problem for farmworkers, 72% felt it was but did not, even with probing, cite a reason that related to fecal pathogenicity. The most common concerns

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were insect and snake bites and the probability of catching cold. When asked if the lack of facilities was a potential health problem for families, 53% said it was not. While 33% percent were concerned with the possibility of tracking fecal matter into the house, upon probing, most indicated their repulsion was primarily aesthetic. When asked if the lack of facilities was a potential public health problem, 76% said no. The remainder were concerned with the possibility of transferring fecal matter to other households, and one expressed concern over the potential of contamination of produce or the consumer.

When asked if migrant health problems would be impacted through the requirement only of defecation into a latrine only and not a urination requirement, 75% said no, but all of those were concerned with the fact that women have to expose themselves in both cases and can still catch cold, get bitten, etc. Probing brought no responses relating to pathogenicity. When asked if handwashing facilities should also be required, or whether toilet facilities were enough, half said toilet facilities were enough. Those who wanted handwashing facilities cited such problems as onion workers getting eye damage, etc. Only one indicated that handwashing facilties in concert with toilet facilties are necessary to improved health.

Additional data from the farmer survey indicates that education may need to extend to the farmers as well. While 33% of farmers felt that the health conditions of migrants need improvement, only 11% felt that migrants have serious health

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problems. Only 18% felt that diarrhea was a significant health problem among the migrants, and most stated that it was a result of eating too much fruit. Only one farmer felt that migrants or their children have a significant problem with nausea, vomiting, or fever. Seventy-three percent did not perceive fecal contamination as a problem because they wash the produce or spray it with chemicals before it is shipped. Only 6% of the farmers thought there could be a public health hazard if the workers voided and excreted in the fields.

These responses are particularly significant in that they indicate a lack of awareness of the Utah farmers of what are clearly epidemic health problems as shown in the chart audit described by Dr. Olsen. Further, as described earlier, 88% felt that farmers should bear the responsibility and cost of providing in-field toilet facilities although only 34% actually did so. Moreover, greater than one half of the farmers who reported they provided facilities also reported they are generally unused. Staff and migrants alike indicate that this is a result of poor accessibility and poor maintenance, indicating educational needs of farmers; and lack of motivation among migrants, indicating educational needs among them.

These data only reiterate what is already known: the farmworker is compromised by the lack of a field sanitation standard and accompanying policies. That the U.S. is still debating the need for water and sanitation facilities for only one sector of its workforce while the entire developing world

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moves toward a provision of facilties for all, despite economic and resource hardships, clearly indicates discrimination. That this continues in the face of OSHA's own acknowledgement of the causal link between health and facilities clearly indicates negligence and further indicates discrimination.[7] That the standard has been delayed again and that testimony continues to be required prior to final promulgation represents a waste of time and resources and an insincerity on the part of policy-makers to ever promulgate the standard.

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1. World Health Organization. Primary Health Care. (Report of the WHO-UNICEF International Conference on Primary Health Care, Alma Atta. U.S.S.R. Sept. 1978). WHO. Geneva. pp. 79. 1978a.

2. Safe Water & Water Disposal for Rural Health. A Program Guide. National Demonstration Water Project. U.S. Agency for International Development 1982.

3. Water & Human Health. F. Eugene McJunkin. National Demonstration Water Project. U.S. Agency for International Development 1982.

4. Safe Water & Water Disposal for Rural Health. A Program Guide. National Demonstration Water Project. U.S. Agency

5. World Bank. Basic Needs: Water Supply & Waste Disposal. U.N. Water Decade Document 1979.

6. Water & Human Health. F. Eugene McJunkin. National Demonstration Water Project U.S.A.I.D., 1982.

7. U.S. Department of Labor. OSHA. Post Hearing Proposed Findings of Fact & Conclusions of Law in the Matter of Proposed Farmworker Field Sanitation Standard. 1984, Document No. H-308.

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Mr. FRANK. Thank you very much.

I have no questions to ask. I think you have among you stated the case legally, experientially, and scientifically, quite adequately. I come away convinced that there is no good reason to deny for another 2 years basic rights that people ought to have. And we will keep up our efforts, some of us.

The subcommittee is adjourned.

[Whereupon, at 1:15 p.m., the subcommittee adjourned, to reconvene subject to the call of the Chair.]

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APPENDIX

MATERIAL SUBMITTED FOR THE RECORD

Washington Office

November 7, 1985

Honorable Barney Frank
Chairman
Subcommittee on Employment and Housing
Committee on Government Operations
B-349-A Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Frank:

This is to provide you with information concerning field sanitation standards for farmworkers in Florida.

In 1975 Secretary of Health and Rehabilitative Services, William Page, posed a question to the Attorney General of Florida as to whether fields and groves within the state where agricultural workers are employed are included with the phrase "places of employment" for the purposes of protection under the public health provisions of the Florida Statutes, section 381.011(1)(g)3, concerning sanitary facilities for buildings serving the public and places of employment. The Attorney General's opinion stated that "the failure of the Division of Health to require provisions of any toilet facilities for these employees at their place of employment seems a dereliction of the duty to protect the public health, safety and welfare." Consequently, regulations were developed and became effective in 1977. The Florida Administrative Code, 10D-10.241(4), sets forth the facilities to be provided for agricultural workers.

I have enclosed copies of the relevant provisions of the Florida Statutes and the Florida Administrative Code. In addition, I am enclosing a copy of the Attorney General's opinion and Division of Health memoranda of October 14, 1975 and February 20, 1976.

The provision of such protection in Florida or any other state based upon the general health and welfare provisions of state law does not address the issue of whether the federal government has an interest in ensuring a basic minimum level of workplace protection for a segment of the laborforce under the Occupational Safety and Health Act. The testimony of health professionals referenced in the U.S. Department of Labor's proposed rule in the Federal Register of March 1, 1984 clearly recognizes the health hazards faced by agricultural workers. These hazards, which include communicable diseases, do not respect state jurisdictional boundaries. Finally, recognizing the limitations of coverage under the Occupational Safety and Health Act, federal action should not preempt broader and more comprehensive state coverage.

Sincerely,

Henry M. Solares
Special Counsel and
Governmental Assistant

Enclosures

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American Paper Institute
ENVIRONMENTAL & HEALTH PROGRAM
National Forest Products Association
1619 Massachusetts Avenue, N.W. • Washington, D.C. 20036

Scott Berg
Environmental Manager,
Lands and Timber
202/797-5852

November 13, 1985

The Honorable Barney Frank
Chairman
Committee on Government Operations
Subcommittee on Employment and Housing
B-349A Rayburn House Office Building
Washington, D.C. 20515

Re: H.R. 3295: A Sanitation, Occupational Health, and Safety Standard for Agricultural Hand-Laborers

Dear Representative Frank:

The National Forest Products Association (NFPA) is concerned that several provisions in H.R. 3295 will have an adverse effect on the forest products industry with little commensurate benefit to workers involved in forest management. We do not quarrel with the evidence, cited by OSHA, showing that hand-laborers engaged in row crop agriculture should be afforded additional protection. We commend your efforts to ensure that those workers are adequately protected. However, we believe that forest management operations are significantly different from row crop agriculture; as a result, standards designed for agricultural workers are unnecessary and unworkable when applied to forestry.

NFPA, a federation of 33 forest industry associations and 16 direct company members, represents more than 2,500 companies engaged in growing timber and manufacturing forest products. NFPA is a national association founded to promote the conservation and renewal of forest resources and to improve forest practices and utilization.

Field forestry operations are significantly different from row crop agriculture: (1) forestry field operations typically require workers to work substantial distances away from sanitation and water facilities; (2) no adverse health risks to workers or consumers have been identified from forestry field operations; (3) pesticide residues are not generally present on forest vegetation when workers are in the field, (4) forested

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terrain provides ample sites to privately dispose of human waste; and (5) forestry crews are generally smaller in size and change locations more frequently than agricultural crews. Further detail about these factors is presented in an attachment to this letter.

For all these reasons, the proposed standards are unnecessary and unworkable when applied to forestry activities. All such activities, therefore, should be exempted from the provisions of H.R. 3295. But as written, the proposed standard would inappropriately -- and perhaps unintentionally -- apply to a variety of forestry activities. Specifically, the term "agricultural establishment" would apply to the forest industry due to our production of "fiber, ... plants, or parts of plants." In addition, "hand labor operations" explicitly includes "the hand planting of seedlings." Consequently, tree planting, thinning operations, hand weeding, managing prescribed fires and fire suppression, and timber marking and cruising all appear to be included. All of these practices, which are very similar to the exempted practice of logging, should also be specifically exempted from the proposed standard.

Finally, federal legislation may not be the most appropriate way to deal with a worker health and safety standard for all agricultural -- let alone all forestry -- workers in all regions of the country. What may be common practice in one state may be absent in another, rendering federal legislation overly restrictive and inappropriate. State standards developed by locally knowledgeable officials would more accurately represent the unique conditions found in each state. Those local officials would also be in a much better position to determine if any forestry operations should or should not be included in any worker sanitation standards.

NFPA is eager to work with you and the House Education and Labor Subcommittee on Health and Safety to provide any additional information that you may need regarding the above mentioned forestry operations. We also request that our comments be made part of the oversight hearing record. Please feel free to have your staff contact me at (202) 797-5852 if I may be of any assistance or if you have any questions regarding our comments.

Thank you.

Sincerely,

Scott Berg

Scott Berg
Environmental Manager
Lands and Timber

cc: Ms. Joy Simonson

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Detailed Comments

1. Forestry field operations typically require workers to work substantial distances away from sanitation and water facilities.

Field hand-laborers performing tree seedling planting, thinning, weeding, cruising timber and fire control generally must cover large distances over sometimes rough terrain. Often, food and water must be carried by the workers who may not return to a road access point for the entire day. Toilets, drinking water, and hand washing facilities located at the nearest road access points would go unused. Requiring sanitation facilities and drinking water at road access points may provide no benefits to the workers and represent an unjustified expense to the employers.

2. No adverse health risks to workers or consumers have been identified from forestry field operations.

The draft OSHA regulations documented research that showed that human waste disposal in agricultural fields could potentially be a source of health related diseases for field workers. These findings appeared to be a major justification for the need for a sanitation standard for migrant farmworkers. To our knowledge, however, these conditions do not exist in forested lands nor was forestry even considered in OSHA's rulemaking. We believe that it is inappropriate to use studies that pertain only to migrant farmworkers in a food crop environment as the basis for an occupational and health standard which would have a significant impact on forestry.

Public health officials have also asserted that the lack of a field sanitation standard for farmworkers is a matter of public health as well as occupational health. The concern appears to relate to the possibility of transmitting third world diseases to the general population through fruits and vegetables contaminated with excrement. However, unlike agricultural products, forest products are not edible and the public could not be exposed. This is another example of the differences between forestry and row crop agriculture and why forestry should be exempted f[illegible] H.R. 3295.

3. Pesticide residues are not generally present on forest vegetation when workers are in the field.

Pesticides used in forestry are generally less toxic than those used in agriculture and pesticides are used far less frequently in forestry than in agriculture. As a result, field forestry workers rarely if ever encounter the pesticide residues that may be present in agricultural settings. Many forest stands are never treated with pesticides except under major insect epidemic conditions. Even if a stand is treated with a pesticide, it is usually applied aerially with no field workers in the forest.

The forestry use of chemicals differs dramatically from agriculture. Field workers do not live or work near such operations and they do not reenter the forest for months or even years after applications. Handwashing facilities to remove chemical residues would therefore be unnecessary and an unjustified burden on employers.

4. Forested terrain provides ample sites to privately dispose of human waste.

Forest land typically contains assorted vegetation and irregular topography that provides excellent visual screening and concealment. Forest workers generally have hand tools available for digging shallow latrines and for covering the site over. Forest soils and the associated decomposing organisms readily breakdown human waste products and use them as fertilizers.

Because of the unique characteristics of forestry crews, forested terrain, and the long periods of time that foresters spend in the woods, providing toilets would not necessarily ensure their use or provide improved sanitation.

5. Forestry crews are generally smaller in size and change locations more frequently than agricultural crews.

Forestry field crews rarely exceed twenty workers. Planting crews in the Pacific Northwest typically consist of from three to seven individuals, fire crews are generally larger consisting of from six to twenty, and thinning and timber cruising crews consist of from two to three people.

Given the way in which H.R. 3295 is worded, each group of 20 employees, or any fraction thereof would require one toilet and one handwashing facility located within a mile or at the nearest road access point. The very small number of field forestry workers that could even potentially utilize these required facilities represents an overly burdensome requirement on employers.

In addition, forestry crews are highly mobile and may travel large distances to a new work location evey couple of days. For example, tree seedling planting crews typically will reforest a unit in two to three days and then move to a new unit, possibly hundreds of miles away. Following these crews around with sanitation facilities is unworkable and impractical.

<u>Conclusion</u>

Based on the above mentioned factors, the vast majority of field forestry workers do not need, probably would not benefit from, and would have limited access to toilets, handwashing, and potable drinking water facilities.. Field forestry operations are very similar to logging operations which are exempt from H.R.

3295. We believe, therefore, that all field forestry operations should be exempt for the reasons detailed above.

If field forestry workers are in fact exposed to significant health risks, the appropriate state health and welfare agencies are better able to focus protection procedures to provide more comprehensive coverage and greater protection than a necessarily general and all encompassing federal law. State health agencies are also in a much better position to adequately administer and enforce worker protection standards.

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STATE OF NEW YORK
DEPARTMENT OF LAW

ROBERT ABRAMS
Attorney General

CARLIN MEYER
Assistant Attorney General in Charge
Labor Bureau

TWO WORLD TRADE CENTER
NEW YORK, NY 10047

November 19, 1985

Representative Barney Frank
Chairman
Subcommittee on Employment and Housing
B 349 A Rayburn House Office Building
Washington, DC 20515

Dear Congressman Frank,

The failure of OSHA to establish a field sanitation rule for farm workers poses a serious threat to the health of farm workers as well as the general public and we applaud your inquiry into the issue.

Although the problem can be addressed at the state level and, in fact, New York already regulates drinking water and various other aspects of field sanitation, state regulation alone cannot afford an adequate remedy. Because farm labor is largely migratory, even states which have mandated field sanitary facilities are not protected against the importation of parasitic diseases and other health problems by migrant field workers who have been subjected to unsanitary working conditions in other states. This not only endangers the health of citizens of states like New York which receive large numbers of migrant farm workers from other states, but forces these states to bear the financial burden of providing health care and other assistance to migrant workers who are unable to continue working because of health problems acquired outside the state.

Uniform regulation is urgently needed and we wholeheartedly support your efforts in that direction.

Very truly yours,

Carlin Meyer

CARLIN MEYER
Assistant Attorney General
in Charge of Labor Bureau

CM:gt

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